e. In an overzealous attempt to represent to this Court that the original report and the original order specifically excepted from the contract system *all* f.o.b., f.a.s. shipments, the petitioner in paragraph 1(H) has flagrantly misrepresented the facts to this Court by quoting only a portion of that which the Board has stated in its report and its order.

The petitioner says:

"In the original report of the Board (p. 47 of the mimeographed copy thereof), the Board stated that, 'we disapprove the contract form insofar as it purports to cover f.o.b. or f.a.s. sales.'"

What is left out of that quotation is the Board's introductory qualifying phrase, "*Except as stated below.*" Refference to page 47 of the opinion quoted in full above, makes it clear that that which is "*stated below*" materially qualifies the flat statement in the partial quotation of petitioner, as does the entire page, particularly the sentence ending the paragraph just above the quotation. The Board there states:

"Such f.o.b. receiver *should* receive contract rates only if he is a contract signatory."

In the same subsection of the Motion, 1(H), and with the same motive, petitioner quotes from the Board's order of December 21, but again does not give the full quotation. This time petitioner ends the quote with a period when in fact the sentence is not completed. The quotation should be ended in a semicolon and the very important phrase "and to that end;" should have been added. The significance of that phrase is that it has the effect of incorporating in the order and the modification to the contracts, the very important qualification required by the Board that "the contract should indicate that the person indicated as shipper in the ocean bill of lading shall be deemed to be the shipper." (Board's report, p. 47)

We present these matters to the Court's attention for the purpose of dispelling any idea that either the order

or the report unqualifiedly excepted f.o.b., f.a.s. shipments from the contracts and for the further purpose of pointing out to the Court the caution with which petitioner's representations must be examined.

We respectfully submit that the motion to remand is completely without substance and should be denied.

Edward D. Ransom
General Counsel, Federal
Maritime Board

James L. Pimper
Assistant General Counsel,
Federal Maritime Board

Filed January 24, 1956

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ISBRANTSEN COMPANY, INC., (suing herein as ISBRANTSEN CO., INC.),

v.

UNITED STATES OF AMERICA and
FEDERAL MARITIME BOARD,
Respondents. No. 13027

and

JAPAN-ATLANTIC and
GULF FREIGHT CONFERENCE,
UNITED STATES LINES COMPANY, ET AL.,
Intervenor Respondents.

Answer of Intervenor Respondents to Motion for Remanding of Order to the Federal Maritime Board

Intervenor Respondents hereby answer the Motion of the Petitioner to remand to the Federal Maritime Board its Order dated January 10, 1956, and served on January 11,

1956, and for a direction to the Board "to recite the circumstances and reasons prompting it and to state the findings of fact which the Board considers would support it." In answer to said Motion, the Intervenor Respondents state:

1. The Motion is a frivolous one, apparently intended to secure for the Petitioner indirectly the delay in effectuation of the Board's Order which is the direct object of the Application for Interlocutory Injunction. The suggestion that the Order of the Board made on January 10, 1956 (hereinafter referred to as the Superseding Order), which, by its terms, supersedes the Order entered by the Board on December 20, 1955 (hereinafter referred to as the Original Order), is not based upon the same full Record and the same full Findings of Fact and Conclusions of Law as the Original Order is mere pretense. As will be demonstrated below, the issuance by the Board of its Superseding Order in no wise alters the scope of the review called for by the Petition herein, nor does it inject any substantially different issue into the proceeding.

2. The findings and conclusions upon which both the Original Order and the Superseding Order must rest and be reviewed appear on Page 47 of the Board's Report, only a fragment of which the Motion refers to.

"We consider articles 1 and 6 of the form contract to be unacceptable as presently drafted despite the conference explanation that article 6 constitutes a modification of article 1 and is controlling over the earlier provision. The two articles under any constructions are objectionable, because as drafted the receiver under the f.o.b., f.a.s. shipments may obtain contract rates so long as he patronizes exclusively conference vessels but once he ships non-conference, he may not thereafter receive contract rates. This provision is objectionable because such a receiver obtains the benefits of contract rates without signing a shipper contract whereas all other non-signers are charged the full non-contract tariff rates and, therefore, unlike treatment is being accorded non-signers. *Such f.o.b. receiver*

should receive contract rates only if he is a contract signatory.

"We approve the contract form insofar as it purports to cover c.i.f. and c. & f. sales. *Except as stated below, we disapprove the contract form insofar as it purports to cover f.o.b. or f.a.s. sales.* Irrespective of the terms of the sales agreement, in any instance where the contract signer appears as shipper in the bill of lading, such fact alone automatically requires that the shipment move on conference vessels. In the situation where the contract signer appears as shipper in the bill of lading, it is no mere matter of form to say he is the shipper in fact. In c. & f. or c.i.f. sales the problem does not arise, because there the contract signer is in fact the shipper, but in f.o.b. or f.a.s. sales we deem it undesirable to have the answer to this problem turn on the complicated questions of law as to risk of loss or when title passes in determining when a given shipment is or is not covered by the shipper's agreement. We deem it highly desirable that simple tests and standards be applicable.

"To this end we consider that the contract should indicate that the person indicated as shipper in the ocean bill of lading shall be deemed to be the shipper. We do not intend, however, to preclude shipment by an exporter as agent for the buyer, where the exporter only renders assistance at the buyer's request and expense, in obtaining the documents required for purposes of exportation." (Italics supplied).

The above quoted language (and particularly that in italics) disproves the contention of the Petitioner that the Board's Report did not contemplate that the contract system should extend to any F.O.B. or F.A.S. transactions. It is clear from the quoted language that the Board intended that C.I.F. and C. & F. transactions should be covered when the seller is the shipper, and that F.O.B. and F.A.S. transactions should be covered when, but only if, the buyer (receiver) is the shipper. The reason for this distinction will be adverted to below. Be that as it may, it will be obvious from a comparison between the Original Order (Exhibit C annexed to the Motion) with the Board's conclu-

sions on Page 47 on the one hand, and from a comparison of the Superseding Order (Exhibit A annexed to the Motion) with that language on the other hand, that the Superseding Order clearly accords with the Board's determination in its Report; whereas, the Original Order, which on casual reading seemingly eliminated F.O.B. and F.A.S. transactions under all circumstances from the contract system, was subject to an interpretation inconsistent with the ruling stated at Page 47 of the Board's Report.

A word of explanation appears to be in order. It might be improper for the Conference to require a Japanese exporter who signs the freight contract to ship exclusively on Conference tonnage, shipments which were made to American buyers on an F.O.B. or F.A.S. basis; for, if these transactions were true F.O.B. or F.A.S. transactions, the buyer became the owner of the goods at some point in Japan or at the very instant of loading on the carrying vessel. That kind of F.O.B. or F.A.S. transaction was intended to be excluded from the provisions of a contract signed by an exporter, and it is so excluded in the Superseding Order. However, there is another kind of situation in which it might be equally improper to exclude F.O.B. and F.A.S. sales from the benefits of the contract system. If the American buyer desires to buy on an F.O.B. or F.A.S. basis in Japan, he should be as free to receive the benefits of the contract system, including contract rates, as a Japanese seller and should not be put at a disadvantage as against competing American importers who buy on C.I.F. or C. & F. terms from Japanese exporters who are contract signatories. If the Original Order had stood as originally written, it would have been arguable that an American importer who wanted to buy his goods on F.O.B. or F.A.S. terms in Japan would have to pay the non-contract rate on all of his purchases moving on Conference vessels; whereas, his American competitor who purchased on a C.I.F. or C. & F. basis could, if the seller signed a contract, have the benefit of contract rates as the

freight component in his C.I.F. or C. & F. price. Such argument would seem to be inconsistent with the statement of the Board on Page 47 of its Report: "Such f.o.b. receiver should receive contract rates only if he is a contract signatory." However, there is no problem at all of reconciling the Superseding Order with this quoted language in the Report.

The Board's Report stated (last paragraph Page 47): "To this end we consider that the contract should indicate that the person indicated as shipper in the ocean bill of lading shall be deemed to be the shipper." Both the Original Order and the Superseding Order contain clauses appropriate to this conclusion reached by the Board. The Board's explanation for this conclusion appears in the preceding paragraphs on Page 47 of its Report. This reasoning is based upon well known principles of the law of sales. From 2 Williston, Sales (Rev. Ed. 1948) 98-101 and 170-171, it appears that many transactions which purport to be F.O.B. sales are not so at all. In such cases, the seller does not intend to pass title upon the loading of the goods aboard the vessel. He intends to hold a security title until his draft for the sales price is paid. In order to accomplish this result, the bill of lading shows the seller or his order as the shipper. Thus, the very circumstances that he is named as the shipper is proof that, notwithstanding the use of the abbreviation F.O.B. in the sales contract, the seller has retained in himself the right to possession and control of the goods past the moment of issuance of the shipping documents and until such time as he is fully paid. Thus, what purported to be an F.O.B. sale partakes of those characteristics of a C.I.F. sale which are relevant to the problem dealt with the two Orders of the Board.

It is, therefore, apparent that the Superseding Order carries out with clarity the intent and purpose of the Board's Report. The following conclusions also result therefrom:

(a) That the Motion shoots far of the mark when it suggests that the Superseding Order would enable the Conference to control American importers. Indeed, it has the effect of affording American importers the same opportunity to contract as is extended to Japanese exporters.

(b) The Superseding Order is based upon the findings and conclusions stated in the Board's Report and requires no additional findings or conclusions. It does, and in the future will, stand or fall upon the Board's Report. If the Superseding Order is not soundly based upon the Board's Report, this Court, in its decision on the merits, will deal with it as it may deserve. No remand for that purpose is required.

3. The Petitioner's argument that it had no opportunity to be heard upon the changes which were or might be required in the form of the shippers' contract, is entirely contrary to the fact. During the entire course of the hearings before the Board Examiner—hearings which continued with minor interruptions from October 5, 1953, to December 23, 1953—the form of the shippers' contract was at all times a subject to which testimony and argument could be, and on numerous occasions were, directed. Indeed, the language at Pages 6 and 7 of the Motion itself demonstrates how live a subject of investigation this contract form continued to be throughout the hearings. In its printed brief to the Examiner, the Petitioner devoted 2½ printed pages to the argument that the form of shippers' contract (Exhibit 5 to the Conference statement under General Order 76) was bad, and that particularly to be condemned was the clause which would give F.O.B. and F.A.S. buyers an opportunity to become contract shippers. Petitioner also submitted 4 Findings of Fact and 2 Conclusions in which the condemnation of this form of shippers' contract was requested. When the Examiner's Findings and Conclusions were issued, Petitioner submitted exceptions to the portions thereof, among others, dealing with the form of shippers' contract. Upon the oral argument before the Board, at which a considerable length of

time was allowed all counsel, the subject matter of the shippers' contract was one of the principal points stressed by all counsel, and Mr. Guill, one of the members of the Board, particularly inquired of all arguing counsel, their understandings with respect to the manner in which C.I.F., C. & F., F.O.B. and F.A.S. transactions would be dealt with under the proposed form. Petitioner's counsel availed himself of the opportunity to explain his points of view with respect thereto and did not complain that he did not have an adequate opportunity to voice his views on this subject. The suggestion that the Petitioner has not been fully heard on the subject of the correct form of shippers' contract to be employed cannot be seriously urged.

4. Petitioner makes further complaint upon this ground. On Page 50 of the Board's opinion Paragraph A of the Board's conclusion, contains the following language: "The approval granted is contingent upon conference amendment of the proposed agreement with shippers to conform with our opinion herein." The Petitioner apparently would argue that this ruling required the Conference to come forward with some form of amendment which would then be subject to further trial, argument, etc. We submit that the logical result of the Board's conclusion above quoted is that the Board itself should state in specific terms how the Conference must amend its form of shippers' agreement in order to comply with the condition attached to the Board's approval of the contract system. This step the Board took both in the Original Order and in the Superseding Order. It laid down in definite terms the conditions with which the Conference must comply. Nonetheless, it is the Conference and not the Board which must amend the freight agreement in accordance with the Board's mandate in order to come within the ambit of the Board's approval.

5. The Motion in Section 5, Page 6, refers to "star chamber methods" and refers, in support of the argument

there attempted, to Section 8 (b) of the Administrative Procedure Act.

Section 8 (b) of that Act contemplates that an agency shall, after hearing, render a decision stating its findings and conclusions, and this is what the Board has done in the instant case. There is no slightest suggestion in Section 8 (b), or elsewhere in the Act, that the Order entered by the agency upon its decision need repeat those findings or conclusions or any part of them. The Board's decision here (the Report) stands as fully behind the Superseding Order as it did in the case of the Original Order. The difference is that the Superseding Order unquestionably corresponds to the decision; whereas, it may be argued that the Original Order did not correspond to the Board's decision. The important point under Section 8 (b) is that the *record* in this case; in the Board's Report, will show the rulings of the Board upon all of the findings and conclusions submitted by the parties. It appears from the language of the Superseding Order that it is not based on new or different findings or conclusions; it is merely an attempt by the Board to express in different words which, to the Board, seem more apt, "the appropriate * * * relief. * * *"[1] to be granted on the basis of the findings and conclusions contained in the Report.

6. The Petitioner would argue on this Motion to Remand its objection that Article 10 of the proposed exclusive patronage contract, as approved by the Board, would require that controversies between contract signers and carriers should be submitted to arbitration in Tokyo. Public Counsel submitted to the Examiner its Proposed Finding # 171, covering the very point which the Petitioner is now seeking to raise. Incidentally, the Petitioner did not argue this point in briefs before the Examiner or the Board. Public Counsel argued that this provision was unreason-

[1] From Section 8 (b) 5 U.S.C. § 1007 (b) of the Administrative Procedure Act.

able insofar as it might apply to a consignee located in the United States.

We suggest that the Board's failure to adopt the suggestion of Public Counsel in this regard may be explained on the following ground. The trade here involved, like all foreign commerce of the United States, concerns two separate sovereign nations respectively governing territory of origin and territory of destination. Were the United States regulatory authorities to insist that, in both outbound and homeward trades, the shippers' contract must contain provisions for arbitration in the United States, it is a very real possibility that the regulatory authorities established by the nation situated at the other end of the international traffic might, for good reason or otherwise, impose a regulation to the opposite effect. The Record before the Board in this case shows that Japan has established a regulatory agency pursuant to a statute in many respects paralleling our Shipping Act, and that this regulatory agency has entered the field of supervision over contract systems. It would seem proper that, in cases of homeward trades where the originating territory is abroad (e.g., Japan) and the exporters' places of business and the offices of the carriers which originate the traffic and issue the shipping documents are located abroad, arbitration of disputes should, in deference to the balance of conveniences, take place abroad. Reciprocally, it would be expected that in outward trades (e.g., to Japan) all arbitration would be held in the United States.

In any event, we submit that this Motion to Remand does not place upon the Court the duty of deciding the merits of the provisions of the shippers' contract. When the Petition to Review is heard, the Petitioner will have its opportunity to raise all questions regarding the validity of the Board's Order upon the Record. Incidentally, neither the Superseding Order nor the Original Order effects any change in the arbitration provision.

7. In Section 5, Page 8, of the Motion, Petitioner argues that an administrative order cannot shift to the Court factual questions and issues. It does not appear in what way Petitioner would contend that the Superseding Order shifts any issues to the Court. The issues are dealt with not in the Superseding Order but in the Board's decision and, as has been stated above, the Superseding Order adds nothing to the functions of the Court in a proceeding such as this, namely, to determine whether the Order is in conformity with the conclusions and whether the conclusions are properly drawn from the facts found and the evidence adduced.

8. There can be no doubt that the Board, even in the absence of an enabling statute, had the power to make the Superseding Order clarifying the Original Order.

In *Pennsylvania R. Co.* v. *United States*, 288 Fed. 88 (W.D. Pa. 1923), a three Judge Statutory Court had before it the question of the power of the Interstate Commerce Commission to amend one of its orders. Originally, after a full hearing the Commission had entered its order directing the Pennsylvania Railroad to establish rates applicable to destinations "east of Harrisburg, Pa., as shown in Pennsylvania Railroad Tariff AA—I.C.C. No. 1132". Thereafter, the Pennsylvania Railroad established such rates but refused to include certain Atlantic Coast piers in the territory governed by such rates. An interested party complained to the Commission that this act of the Railroad was contrary to the intent and purpose of the order which had been entered. Thereafter, without notice or further hearing, the Interstate Commerce Commission amended its order so as specifically to make it apply to the Atlantic Coast piers. The act of the Commission in thus amending its order without notice to any party, was attacked by the Railroad before a Statutory Court. That Court emphasized the fact that the amended order was not based on any new evidence and that the Railroad had

fully litigated the question during the original hearing. The Court cited no statutory warrant for the Commission's action. In disposing of the matter, the Court said:

"And it has been made to appear to the court, and we find as a fact, that testimony actually was taken at the hearing relative to shipment of coal to said piers and transshipment by water. The transcript of the testimony taken makes it quite plain that the participants in the hearing had the matter in mind, and recognized the fact that the Pittsburgh Terminal Railroad & Coal Company was seeking a complete outlet for its coal to and through the destinations named in Tariff AA—I.C.C. 1132. In other words, we find there was no actual denial of hearing upon the question involved by the Interstate Commerce Commission.

"Assuming this fact, there can be no question, we think, as to the power of the Commission to amend its order, without further hearing, for the purpose of removing ambiguity. The prayer for a preliminary injunction is denied."

Upon this showing the bill for relief was dismissed.

The Pennsylvania case was referred to by the Supreme Court in *L. & N. R. R.* v. *Sloss-Sheffield Co.*, 269 U.S. 217, 225 (1925). There, an Order of the Interstate Commerce Commission ordered reparations in favor of the shipper and against the carrier. After court proceedings in which this Order was sustained, the Interstate Commerce Commission at the instance of the shipper, but without any notice or hearing to the Railroad Company, set aside the above Order and entered a new Order which refused the amount of reparations payable by the Railroad. In thus reducing the amount the Commission acted upon admissions by the shipper that certain items of reparations had been improperly included in arriving at the total award. However, in addition to eliminating these items which were concededly improper, the Railroad contended that the Commission added certain items which the Railroad had contested, and which originally had been excluded. There can,

of course, be no doubt but that the aggregate of the second award was smaller than the aggregate of the first award. In sustaining the action by the Commission without notice, the Supreme Court emphasized that at the earlier stages of the proceeding before the Commission, the Railroad had every opportunity to litigate and actually did litigate all of the questions involved in making the second Order. Without referring to any statutory warrant, the Court disposed of the matter in the following manner, at P. 225:

"The Commission, like a court, may, upon its own motion or upon request, correct any order still under its control without notice to a party who cannot possibly suffer by the modification made. Compare *Pennsylvania R.R. Co.* v. *United States*, 288 Fed, 88. This power of the Commission is, in adversary proceedings, narrowly circumscribed; and its exercise is not to be encouraged."

Where an administrative agency having rendered its decision issues an Order which it later finds not to be in conformity with its decision, and where no new evidence of any kind is required, and where all of the parties have fully litigated all of the questions involved prior to the issuance of the agency decision, no statutory warrant is required in order to enable the agency to correct an ambiguity or to clarify its Order, or to make it conform to its decision. Such was the case here. The Board, however, does have broad statutory warrant which enables it to "reverse, suspend or modify" its own Orders. This statutory warrant appears in Section 25 of the Shipping Act, (46 U.S.C. § 824) which provides as follows: "The Commission may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it." It should be noted that the foregoing language is much broader than the provision contained in the corresponding section of the Interstate Commerce Act —§ 16(6) (49 U.S.C. § 16(6)), which is as follows: "The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper." It will be observed that the power to re-

verse which is granted in the Shipping Act is absent in the Interstate Commerce Act. Nonetheless, in *Froeber-Norfleet, Inc. v. Southern Ry. Co.*, 9 F. Supp. 409 (N.D. Ga. 1934), the Commission had entered an Order determining that certain rail rates were reasonable. Petitions for reconsideration were denied. Thereafter, another petition for reconsideration was filed, and on these petitions, the Commission ordered that the proceeding should be reopened. Without further hearing, the Commission then entered its Report following another decision in another case in the same general destination territory and thereupon, found that the rates were unreasonable. In other words, here was a complete reversal of the position which the Commission had taken. *Its conclusion derived from the findings and the evidence was completely altered.* Under the Commission's Rule 15(e), a petition for rehearing could not be filed more than 60 days after the service of a report. In speaking of the situation thus presented, the Court used the following language:

"The Commission may properly, under its rule 15(e), deny a party the right to file a petition for rehearing in a reparation case unless it be presented within 60 days, but I do not see anything in this rule to prevent the Commission, on its own motion, from reconsideration and reversing or modifying one of its orders, whether the matter be brought to its attention by a petition, which a party could not file as a matter of right, or in some other way."

The corresponding provision in the Civil Aeronautics Act 49 U.S.C. § 645(d), is quite similar to that obtained in the Interstate Commerce Act, and is much narrower than that contained in Section 25 of the Shipping Act above quoted.

In *Southwest Airways Co.* v. *Civil Aeronautics Board*, 196 F. 2d 937 (9th Cir. 1952), the Board had entered an Order granting a temporary certificate to an airline. Thereafter, upon a petition for reconsideration, but without any hearing, the Board entered an Order rescinding the tem-

porary certificate. The airline objected that its rights had been violated because it had no opportunity to be heard before the entry of this second Order. The Court said, at P. 938: "* * * The Board certainly has the power to reconsider its orders and set them aside, 49 U.S.C.A. § 645 (a) and (d), and if certificates not yet effective are dependent on those orders, they will also be extinguished. The situation is totally different from that in which a certificate has become effective."

We consider it obvious that the Order originally entered is ambiguous. Although the first "Ordered Clause" appears to eliminate f.o.b. and f.a.s. shipments, the second "Ordered Clause", which sets forth in *haec verba* the provision which the Board had prescribed for inclusion in the contract, contains the provision (wholly consistent with the Board's Report) that for all purposes of the agreement the person indicated as shipper in a bill of lading shall be deemed to be the shipper of the goods. Under the proviso, if a contract signatory should offer a shipment to a Conference line, such Conference line would have to give the shipper the benefit of the lower contract rates without inquiring into the nature of the transaction by which he gained right to make shipment of the goods, i.e., whether it was c.i.f. or c. & f. or f.o.b. or f.a.s. Likewise, if a signatory to the contract should make a shipment by a non-conference line and if the bill of lading governing the shipment were in his name, he could not be heard for the purpose of this agreement to argue that he had rightfully shipped by the outside Conference line, because under the terms of his transaction with somebody else, he may have been engaged in shipping goods which he had purchased f.o.b. or f.a.s. This ambiguity and inconsistency the new Order eliminates.

9. Having thus dealt with the merits of this Motion, we must now deal with Petitioner's insinuations respecting the Board and the conference. The statement appearing at Page 5 of the Motion "that such amendment was prompted

by certain ex parte representations and arguments made by the Conference in private conferences and conversations with the Board * * *" is absolutely untrue. The intimation that the Original Order might require a change in verbiage was first communicated to counsel for the Conference by the Board's General Counsel in the course of a telephone call from Conference counsel with regard to certain subject matter contained in the Board's Answer to the Petitioner's Application for Preliminary Injunction. After Conference counsel had learned of the Board Counsel's concern on this subject, however, he made certain suggestions to Board's Counsel over the telephone and during a visit to Washington, as to the manner in which the Original Order might be recast so as to eliminate the concern expressed by Board's Counsel. No discussion was had with any member of the Board and not one of the suggestions made by Conference counsel to Board's Counsel was adopted; and the amendatory language embodied in the Superseding Order is 100% the work of the Board itself and/or of its staff.

Conclusion

Petitioner's Motion suggests no proper reason for the remand of the Superseding Order. Intervenor Respondents are driven to the conclusion that the Motion is being made merely for the purpose of achieving, indirectly, the relief sought by the Application for the Interlocutory Injunction.

We respectfully submit that the Motion should be denied.

Landis, Cohen, Rubin & Schwartz
1832 Jefferson Place, N. W.
Washington 6, D. C.

Elkan Turk
120 Broadway
New York 5, N. Y.
Counsel for Intervenor
Respondents

Filed January 24, 1956

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v.

UNITED STATES OF AMERICA and
FEDERAL MARITIME BOARD,
Respondents,

and

JAPAN-ATLANTIC and
GULF FREIGHT CONFERENCE ET AL,
Intervenor Respondents

No. 13027

Reply of Petitioner to Answers of Respondent Board and Intervenor Respondents to Petitioner's Motion to Remand the Order of the Board

Petitioner herein, Isbrandtsen Company, Inc., submits the following reply to the Answers of the Intervenor Respondents and the Respondent Federal Maritime Board:

1. Petitioner considers it appropriate to reply to the respective Answers of the Intervenor Respondents and the Respondent Federal Maritime Board in one document, since, through deliberate joint efforts or otherwise, they contain similar, if not identical, arguments. Petitioner considers it unnecessary to reply in detail to the customary epithets of the Conference and the Board, which merely characterize their approach to the legal problems which arise whenever the inviolable exclusive patronage contract rate system is attacked. The characterization of Petitioner's Motion as "frivolous" by the Conference may serve the purposes of the Conference counsel of avoiding the serious substantive legal questions involved, but these customary tactics can hardly succeed in effacing these

problems. Certainly, Petitioner, in maintaining costly and seemingly endless litigation before the Board and the Courts since 1948, attacking the fundamental legality of the predatory exclusive patronage system, has hardly been indulging in frivolities. Such an abusive charge is also presumably leveled at the United States Departments of Justice and Agriculture which have joined Petitioner or taken the same position in attacking the legality of the system in this litigation before the Board and the Courts. Presumably also the charge would cover the Board's own overseer, the Department of Commerce which, at times, has taken the same position. The completely unfounded suggestion that Petitioner has interposed its Motion to Remand for purposes of delay is either self-delusion or the peculiar and misconceived theory of these counsel on the methods of legal self-defense. Petitioner does not request nor desire any delay in this Court's decision on its application for Interlocutory Injunction or in its Petition to Review but it feels entitled to have an unambiguous and unequivocal statement of the Board's findings of fact and conclusions, on which the Board's supplemental Order of January 10, 1956 may be based, so that it may proceed intelligently with its Petition to Review. This is the purpose of the instant Motion to Remand the latest supplemental Order of the Board.

2. The Answers of the Conference and the Board attempt to create the impression that there is some measure of clarity attendant to the Board's original Report and that the findings and conclusions therein in fact support its supplemental Order of January 10, 1956. Upon analysis, however, the Board's purported findings are not merely hopelessly involuted—they just do not intelligently support what the Conference and the Board now say they "clearly" mean. Petitioner, before filing its Petition to Review, read and reread several times every line of the Board's Report. There are many parts of the Report which could only be interpreted by a party in privy with the Board, and not by

any transportation or legal expert, no matter how clairvoyant he might be. The Board's failure of expression is not, however, unprecedented for it has on occasion gone even so far as to state that it may have approved some exclusive patronage system unconsciously or tacitly. Nevertheless, in order to indulge the Board and the Conference in their curious post-mortem analysis, petitioner is willing to undertake a critical exposition of each sentence in that part of the Board's Report, appearing on pages 46 and 47 of the Mimeographed copy thereof, which the Board and the Conference both quote in their answers (Such sentences are listed separately below under the headings A through M):

A. "Various of the provisions of the contract form proposed for use in this trade require particular examination, for as hereinbefore indicated, shipper witnesses in this proceeding were unfamiliar with the contract and had not been consulted by the conference in its preparation."

This statement is clear, so far as it goes, and is most certainly true. The Conference shipper witnesses were all unfamiliar with and did not understand the exclusive patronage contract (Transcript, Docket 730, pp. 697, 700, 717, 2819, 2824). It was testified, furthermore, that such shippers understood that the contract was merely tentative and that it would be discussed with shippers before becoming effective (Transcript, Docket 730, pp. 648, 700, 717, 727, 728).

B. "We consider articles 1 and 6 of the form contract to be unacceptable as presently drafted despite the conference explanation that article 6 constitutes a modification of article 1 and is controlling over the earlier provision."

Articles 1 and 6 of the proposed contract purported to cover all shipments on Conference vessels whether they were made "C.I.F., C.&F., F.O.B., ex go down or by any other terms." The quoted language of the Board, while not especially meaningful, at least gives the impression that these articles were for some reason unacceptable to the Board.

C. "The two articles under any construction are objectionable, because as drafted the receiver under the F.O.B., F.A.S. shipments may obtain contract rates so long as he patronizes exclusively conference vessels but once he ships non-conference, he may not thereafter receive contract rates."

This language is obscure and meaningless. The reason stated would hardly support the Board's newly discovered conclusion that F.O.B. and F.A.S. shipments could be covered by the exclusive patronage contract. So far as petitioner is aware the underlying theory of the exclusive patronage contract rate system is that the contract signer would obtain "contract rates so long as he patronizes exclusively conference vessels but once he ships non-conference, he may not thereafter receive contract rates." If this provision is unlawful, and it is Petitioner's contention herein and the purpose of this Review that it is, then the entire exclusive patronage contract rate system is unlawful.

D. "This provision is objectionable because such a receiver obtains the benefits of contract rates without signing a shipper contract whereas all other non-signers are charged the full non-contract tariff rates and, therefore, unlike treatment is being accorded non signers."

The language of the Board now becomes more and more unmeaningful and unintelligible. The reference to "This provision" is by no means clear. Up to this point the Board had been speaking about articles 1 and 6 of the exclusive patronage contract. The Board had not mentioned or referred to any "provision" in such contract—and to this day has not. The statement says that "such a receiver obtains the benefit etc." and then goes on to say that "all other non-signers are charged the full non-contract tariff rates etc." There is no explanation of what "all other non-signers" may mean. If it should mean all other "receivers," it does not make sense, because presumably any receiver of C.I.F. or C.&F. shipments would receive the "benefit" of the contract rates *without signing* such a contract, provided the shipper or consignor had signed an ex-

clusive patronage contract. If the statement should be a cryptic and unexplained attempt to make "F.O.B. consignee" synonymous with the term "shipper" then there is absolutely no reasoning to explain such a novel and unprecedented approach.

E. "Such F.O.B. receiver should receive contract rates only if he is a contract signatory."

Both the Conference and the Board now consider this language quite significant for it appears underscored in their Answers. Standing alone it would appear to be significant, but its apparent purport is completely negated and contradicted by the various statements immediately following. There is nothing in the way of findings furthermore to support such a conclusion, if in fact it should be deemed a conclusion of the Board, which it is clearly not under any sensible reading of the Board's Report. The essentiality of findings to support such a conclusion is apparent in light of the fact that there was never any clear statement in the record that consignees would be called upon to sign such an exclusive patronage contract. Importer witnesses, *presented by the Conference*, testified that they understood that they would not be called upon to sign exclusive patronage contracts and had not even considered the possibility (Transcript, Docket 730, pp. 2208, 2819, 2824). At least one such importer (consignee) testified that he considered the contract unreasonable, and that he would not enter into it (Transcript, Docket 730, pp. 2827, 2828). In the light of this unrebutted evidence of record, a conclusion that an f.o.b. receiver should sign such a contract would be without any evidentiary support. Such a conclusion, however, was apparently allayed by the following sentence:

F. "We approve the contract form insofar as it purports to cover c.i.f. and c.&f. sales. Except as stated below, we disapprove the contract form insofar as it purports to cover f.o.b. or f.a.s. sales."

Here the statement is unequivocally made that the "contract form" is disapproved insofar as it seeks to cover F.O.B. or F.A.S. sales. It is true that the qualifying words "except as stated below" precede this statement. These words, however, were presumably intended to settle the controversy which ensued at the hearing concerning who had the right to control the routing of a shipment. The Conference counsel contended that in some cases the shipper or consignor might have the right to route an F.O.B. shipment. Presumably the Board's language which follows was intended to solve the problem of whether the shipper or consignee had the right to route an F.O.B. or F.A.S. shipment, or so Petitioner, and we believe others, understood. In any event, there is nothing stated clearly below this statement in the Board's Report that any F.O.B. or F.A.S. sales could be covered by the system. If the Board had intended to achieve such a result it certainly would have been no special problem for them so to state in clear and precise language.

G. "Irrespective of the terms of the sales agreement, in any instance where the contract signer appears as shipper in the bill of lading, such fact alone automatically requires that the shipment move on Conference vessels."

This statement is without any meaning in the context of the Board's Report. As explained in the attached Second Supplementary Affidavit of Matthew S. Crinkley (attached hereto as Exhibit A), the consignor or supplier in Japan is invariably listed in the bill of lading as the "shipper" irrespective of whether the terms of sale are F.O.B., F.A.S., C.I.F., or C.&F. Presumably, this statement standing alone would give the Conference the right to control F.O.B. and F.A.S. shipments under the exclusive patronage contract merely by the device of signing the suppliers or shippers in Japan. The previous sentence in the paragraph, which has been quoted in paragraph F above, is contradictory, however, to such a conclusion, for it states that the exclusive patronage contract is disapproved "insofar as it

purports to cover F.O.B. or F.A.S. sales." Therefore, if the Board had intended to authorize the Conference to control F.O.B. and F.A.S. shipments merely by the device of signing the suppliers or shippers in Japan, and thereby controlling them under exclusive patronage contracts, its previous statement of disapproval would be wholly without meaning. Was this a cleverly concocted device to serve the purposes of the Conference and deliberately to mislead Petitioner and this Court, as well as the shipping public? Petitioner assumed that the Board's disapproval of the contract insofar as it purported to cover F.O.B. and F.A.S. sales had some meaning. Apparently, on the basis of the Board's newly discovered interpretation, however, as issued in its Supplemental Order of January 10, 1956, this statement was without any meaning whatsoever.

II. "In the situation where the contract signer appears as the shipper in the bill of lading, it is no mere matter of form to say he is the shipper in fact."

Just what the significance of this curious statement may be, petitioner is still unaware. Petitioner is willing to admit that the consignor in Japan, who arranges for the bill of lading and arranges for the transportation of the goods to shipside, is the shipper *in fact* irrespectively of whether the terms of the particular sale are F.O.B., F.A.S., or on any other basis.

I. "In c.&f. or c.i.f. sales the problem does not arise, because there the contract signer is in fact the shipper, but in f.o.b. or f.a.s. sales we deem it undesirable to have the answer to this problem turn on the complicated questions of law as to risk of loss or when title passes in determining when a given shipment is or is not covered by the shipper's agreement."

This statement also is without any meaning. The Board speaks about a "problem" without indicating in any way what this problem may be. The statement, in any event, certainly does not indicate that the Board would authorize the signing of F.O.B. or F.A.S. consignees located in the

United States under exclusive patronage contracts, nor could it possibly support such a conclusion. As we now understand the Board's purpose, they attempt to shift the whole burden of determining what shipments may be covered by the exclusive patronage contract to an irrelevant question of fact; viz., who is named in the bill of lading as the shipper? There was not a word of testimony or discussion of such a suggestion at the hearing. The suggestion is meaningless. An F.O.B. or F.A.S. sale merely means that the buyer pays cash for the goods when they are delivered to the ship in Japan and that he has the right to designate the routing of the shipment, as set forth in Exhibit 58 in Docket 730 introduced by Conference Counsel, being the "Revised American foreign Trade Definitions," published by the National Foreign Trade Council. The problem concerning whether such shipments could be covered by the exclusive patronage contract has nothing to do with when "title passes" or risk of loss. It is a factual question of who has the right to designate the carrier. The Board, in proposing its "simple test," would presumably on its own action override or change the long-standing commercial customs and understandings in this trade.

J. "We deem it highly desirable that simple tests and standards be applicable."

It would naturally be expected that the Board after making this statement would outline some "simple test" that would apply, although it is not clear what purpose such "tests and standards" would serve. The tests which the Board actually states are not only simple, they are meaningless. Any simplicity accomplished inures entirely to the benefit of the Conference and would presumably take away the long-standing and well-recognized right of the F.O.B. buyer to designate the carrier.

L. "To this end we consider that the contract should indicate that the person indicated as shipper in the ocean bill of lading should be deemed to be the shipper."

It is just as "simple" as that! As explained in the attached affidavit of Matthew S. Crinkley, however, the person indicated as the shipper in the bill of lading is almost always the consignor in Japan, irrespective of the terms of sale. The Board, therefore, might be considered as approving the coverage of the exclusive patronage system to include F.O.B. and F.A.S. shipments, but, as stated above, this is contrary to its previously stated conclusion disapproving such a result, which at least has some measure of clarity.

M. "We do not intend, however, to preclude shipment by an exporter as agent for the buyer, where the exporter only renders assistance at the buyer's request and expense, in obtaining the documents required for purposes of exportation."

This statement, as many of the others in the Board's Report, has no particular meaning to Petitioner, nor do we believe to anybody else. What the Board may mean by their phrase "precluding" shipments is unknown. How is the Board located in Washington going to decide such complicated questions of fact under its "simple" test—or is the Conference to have the final word in sitting as judge in its own case? We can answer this—Yes!

3. The quotation, as analyzed above, cited by the Conference and the Board, taken from pp. 46 and 47 of the Board's Mimeographed Report, omits the following paragraphs which follow the quotation:

"The significance of articles 1 and 6 is readily apparent when it is realized that over 70 percent of the liner cargo in this trade moves under f.o.b. (or f.a.s.) terms.

"In this regard it will readily be recognized that participation by Isbrandtsen in this trade greater than that anticipated by the parties must be forecast, in view of the freedom of the Japanese exporter to sell and ship under f.o.b. terms."

If it was this "freedom" which the Board held out to Isbrandtsen as a gratuitous and mollifying sop to pre-

vent Isbrandtsen's total elimination from the trade, such "freedom" has now been extinguished by the Board's own interpretation of its original Declaration of Independence.

Certainly these quotations would seem to indicate that the Board was not intending to authorize the coverage of the exclusive patronage system insofar as F.O.B. or F.A.S. sales were concerned. Any fair and sensible reading of the Board's Report would support such an interpretation. The conclusion was corroborated furthermore by the first order of the Board, served on December 21, where it was stated unqualifiedly that the contract system

"shall not apply to shipments which are made on an F.O.B., F.A.S., or ex go down basis, or to the transportation of cargoes in refrigerated compartments."

Therefore, the Board's own understanding of its Report in its first Order was presumably that F.O.B. and F.A.S. shipments could not be covered by the exclusive patronage contract.

4. The Board has been willing at all times, until the instant Motion has been filed, to allow Petitioner to operate under his justified conclusion that F.O.B. and F.A.S. shipments were not to be covered by the exclusive patronage system.

Petitioner's assumption in this respect was made quite clear to the Board by Petitioner's letter to the Board dated December 21, 1955 (a copy of which is attached hereto as Exhibit B), in which petitioner stated its understanding of the Board's holding in Docket 730, "that a conference using the exclusive patronage contract non-contract dual rate system could not bind shippers under the exclusive patronage contracts with respect to F.O.B. or F.A.S. shipments." The Board now states that it was considering the "clarifying" amendment to its original Order as early as "approximately December 22, 1955." This was one day after Petitioner's letter of December 21, 1955 was delivered to the

Board, and was furthermore only one day after the issuance of the Board's first Order on December 21, 1955.

The Board was perfectly content to allow Mr. Crinkley to prepare his affidavits concerning the damage which would result to Petitioner, if the exclusive patronage contract system should be instituted, on the assumption that F.O.B. and F.A.S. shipments would not be covered by the system. There was no attempt by the Board to answer these affidavits in this respect or to correct this "misapprehension." A simple local phone call or letter to Petitioner would certainly have clarified the matter. The Board, as the Answers of the Board and Conference now admit, had no hesitancy whatsoever in talking with the Conference counsel in New York for the purpose of soliciting his views on the matter. The Board's insolent and fantastic answer is now that Petitioner's misapprehensions "must have resulted from Petitioner's failure to examine the Board's report." The Board knows Petitioner and its Counsel better than that! Constraint appears more appropriate than a reply to this abusive statement. Petitioner does say, however, that if the Board had displayed the courtesy in elemental fairness of reading and replying to its letter of December 21, 1955, Petitioner's "misapprehensions" would not have continued.

5. The practical consequences of the Board's newly announced principle that an F.O.B. consignee may be deemed the "shipper" and may be forced to sign an exclusive patronage contract with the conference are explained in the attached affidavit of Matthew S. Crinkley.

6. It is significant that the Board and the Conference both admit in their present Answers that conferences and discussions took place between the Board's attorneys and the Conference counsel concerning the subject matter of the Board's amendatory Order of January 10, 1956, prior to its issuance. The Answers of the Conference and the Board would now attempt to shroud such conferences with

the sanctimony of incidental and unimportant conversations. The fact remains, however, that one party to the administrative proceeding had privy with the Board's staff concering the amendment which affected the substantive outcome of the proceeding. How could the Board possibly destroy Petitioner's rights under the Administrative Procedure Act by the tactic of leaving part of the decision for issuance after the Board's original Report? Does the Board now suggest this as a new and novel way to deprive parties of their rights under the Administrative Procedure Act?

It makes little difference whether the conferences between the Board's attorneys and the Conference counsel were with Board members or not. The Board's Reports and Orders are assumedly in some respects institutional decisions. The Board's Answer, in fact, admits on pages 8 and 9 that the staff of the Board's General Counsel drafted the Board's Supplemental Order of January 10, 1956 and the General Counsel then presented it to the Board after the Chairman had reviewed it and made a "minor change." It is certainly a strange and frightening suggestion that the Board could immunize itself from the requirements of the Administrative Procedure Act by issuing a perfunctory report and then caballing with its own counsel, who participate in such adjudicatory proceeding, and with counsel for one of the private parties, in drafting a dispositive order to the exclusion of all other parties to the administrative proceeding. Neither Board counsel nor Conference counsel could possibly offer a single authority to support such a brazenly outrageous proposition.

7. Petitioner requested in its present Motion to Remand the Board's Supplemental Order of January 10, 1956 that the Board recite or explain the statement in the Supplemental Order that it was issued for "good cause appearing." A proper explanation in this respect has not been given in either the Answer of the Conference or the An-

swer of the Board, nor could such an explanation be satisfactorily given by counsel. Again, Petitioner does not understand the concern of the Conference in this matter which should properly be a matter to be answered by the Board.

8. The present circumstances offer the most persuasive reasons why the injunctive relief requested by Petitioner should be granted before February 1, 1956, the date on which, pursuant to the Stipulation filed by the Conference, the Conference intends to sign up shippers in the trade under exclusive patronage contracts.

WHEREFORE, Petitioner respectfully requests that the Court remand to the Federal Maritime Board and Board's Supplemental Order of January 10, 1956 for the purpose of explaining the circumstances surrounding the issuance of that Order and explaining the phrase "for good cause appearing," and furthermore, for a statement of any findings and conclusions which would support the newly discovered interpretation of the Board's report as announced in the Board's "clarifying" amendment to its original order.

January 27, 1956

JOHN J. O'CONNOR
John J. O'Connor
Attorney for Petitioner
Washington Building
Washington, D. C.

EXHIBIT A

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ISBRANDTSEN COMPANY, INC.,
Petitioner,

against

UNITED STATES OF AMERICA and
FEDERAL MARITIME BOARD,
Respondents,

No. 13027

and

JAPAN-ATLANTIC and
GULF FREIGHT CONFERENCE, ET AL,
Intervenor-Respondents.

SECOND SUPPLEMENTARY AFFIDAVIT OF MATTHEW S. CRINKLEY

STATE OF NEW YORK, }
COUNTY OF NEW YORK } ss.:

MATTHEW S. CRINKLEY, being duly sworn, deposes and says:

I am Executive Vice-President of the petitioner and have previously filed an affidavit and a supplementary affidavit in this proceeding. I now make this second supplementary affidavit for the purpose of commenting upon the supplemental order of the Federal Maritime Board, dated January 10, 1956, and the answers of the Board and the Conference to Isbrandtsen's motion to remand such order. That order now apparently authorizes the Conference to control F.O.B. and F.A.S. shipments and the consignees thereof as "shippers" under the Conference's exclusive patronage contracts, and to prevent F.O.B. and F.A.S. consignees from exercising their long-established right to designate the routing of the shipments to which they have title, over the carrier of their choice.

As I have previously stated, I attended virtually all the hearings before the Federal Maritime Board Examiner in this administrative proceeding, known as Docket 730. The various importer witnesses located in the United States, who appeared for the Conference, stated that they had never considered signing such an exclusive patronage contract.

Previously to filing my original and supplemental affidavits, I had read the Board's Report several times and had discussed it with our attorney and with others. It was the unanimous opinion of all those with whom I talked that the Report expressly prohibited the exclusive patronage contract system from covering F.O.B. and F.A.S. shipments. This understanding was corroborated by the express terms of the Board's first order, served on December 21, 1955, which stated that the system

"shall not apply to shipments which are made on an F.O.B., F.A.S. or ex-go-down basis or to the transportation of cargoes in refrigerated compartments."

My previous affidavits on the subject of irreparable injury and damage which would result to Isbrandtsen upon the institution of the exclusive patronage system were premised upon the understanding I have stated above and on the assumption that if F.O.B. shipments were not covered by the exclusive patronage contract, Isbrandtsen might be able to get some of those shipments. The damage which I previously stated would result to Isbrandtsen on the institution of the exclusive patronage system would now be greatly increased, by reason of the Board's new order, served on January 11, 1956, for, without access to F.O.B. or F.A.S. shipments, we would, for all practical purposes, be completely eliminated from the trade.

Since I now understand that the latest order of the Board authorizes the exclusive patronage system to cover F.O.B. and F.A.S. shipments, by the device of considering the F.O.B. and F.A.S. supplier as a "shipper," I shall comment upon the practical results of this newly-devised

interpretation of the Board's order by the Board itself. I am intimately familiar with bills of lading used in this trade, with experience in such matters for about thirty years, and with the understanding of the terms therein in the trade and the methods used in effecting sales between suppliers in a foreign country and receivers in the United States. Now, at this late date, I am advised that the following language in the Board's order is particularly relevant in this respect, to wit:

"provided that, for all purposes of this agreement, the person indicated as shipper in any ocean bill of lading shall be deemed to be the shipper of the goods described in the bill of lading."

This would now become the language of the exclusive patronage contract, as re-written by the Board itself.

In ocean bills of lading the consignor is virtually always indicated as the shipper, whether the sale is F.O.B., F.A.S., C.I.F., or any other basis. The ocean bill of lading itself does not indicate the terms of the sale. For example, if supplier A, in Japan, sells F.O.B. Tokyo to buyer consignee B, in New York, A is shown as the shipper in the bill of lading. The Board's new order, stating that the shipper appearing in the bill of lading should be the controlling matter as to who should be bound under the exclusive patronage contract, would mean that the supplier in Japan would be bound, even on F.O.B. and F.A.S. shipments, if he has signed an exclusive patronage contract with the Conference to make all his shipments on Conference vessels.

From a practical standpoint, this is the way an F.O.B. or F.A.S. shipment would be handled, where the buyer consignee gives instructions for the routing of the shipment. He gives instructions as to the line or vessel to be used to carry the goods and opens a letter of credit through his United States Bank, providing for payment to be made for the goods against surrender to the Bank in Japan of the original ocean bills of lading, properly endorsed. They

are the controlling documents concerning the cargo itself. The buyer must use this method, because he can hardly afford to pay for the goods before he is able to exercise control over them. Thus, the supplier is forced to take out the bill of lading in his own name. He cannot take it out showing the buyer as shipper, for to do that would mean that the supplier would lose control before he is able to receive payment through the Japanese Bank against the buyer's letter of credit. Invariably, the procedure is that the supplier takes out the ocean bills of lading, showing himself as shipper, and that the goods are consigned to his own order. He then endorses the bill of lading and it becomes a negotiable document, which he can turn over to his Japanese Bank, whereupon he receives payment for the goods, and simultaneously the Japanese Bank forwards the endorsed bill of lading to the buyer in the United States. The buyer then has control of the goods for which he has paid.

It is my firm conclusion, from my experience, that the supplemental Order of the Board gives to the Conference the go-ahead signal to control all shipments in the trade—F.O.B. and F.A.S., as well as C.I.F., etc., and therefore enables the Conference to destroy any independent competition immediately and completely, on the basis of any access to F.O.B. shipments.

I believe the shipping public was entitled to rely on a sensible business reading of the Board's Report, which Report, by itself, expressly stated that F.O.B. and F.A.S. shipments could not be controlled by the exclusive patronage contract. It was not until the second Order of the Board that such a reasonable conclusion and interpretation was attempted to be repudiated.

We have a result here, where the confused wording of the Board's Report, in connection with the Board's supplemental Order, makes no sense, in the way that the result would work out.

From my experience as a practical shipping man in this trade and many others, I state frankly that I do not understand the Board's reasons as stated and I cannot find in the Board's Report or Orders any relevant findings that are stated to support the Board's newly-expressed conclusion as to the coverage of F.O.B. shipments.

This entire matter is too vital to the proper conduct of the commerce of the United States to be left in such a state of confusion, especially if the final interpretation is that F.O.B. and F.A.S. sales and shipments are to be covered by exclusive patronage contracts, which the supplier of the goods enters into with the Conference. Such an arrangement would upset the basic, long-established fundamental custom, practices and understandings, as generally agreed to by national and international trade organizations and banks, and so expressed in their published definitions of international trade terms.

Sworn to before me this
25th day of January, 1956

MATTHEW S. CRINKLEY

LUCY S. BUTLER

Notary Public, State of New York
#41-0521350 Qualified in Queens County
Term Expires March 30, 1957

EXHIBIT B

LAW OFFICES
JOHN J. O'CONNOR
WASHINGTON BUILDING
WASHINGTON 5, D. C.

December 21, 1955

Re: Docket No. 764

Mitsui Steamship Co. v. Pacific Coast European Conference Lines

and

Docket 773

American Potash & Chemical Corporation v. Pacific Coast European Conference Lines

Federal Maritime Board
441 G Street, N. W.
Washington 1, D. C.

Dear Sirs:

We are now compelled to ask you to act promptly, and without further delay, on our Petition, dated and verified November 1, 1955, to intervene in the above-mentioned Dockets, which we filed, pursuant to Rule 5(n) of your Rules of Practice and Procedure, nearly two (2) months ago.

Isbrandtsen is the only independent American Flag operator on this Trade Route, and it competes directly with the twenty-one (21) Foreign Flag and one (1) American Flag Members of the Conference. The temporary independent Foreign-Flag operator, Mitsui, belongs to Conferences all over the world.

Our present and most urgent request is prompted by the article in the "Congressional Information Bureau,"

Bulletin Number J-17 of December 19, 1955, that the Pacific Coast European Conference at a "special meeting," held on Friday, December 16, 1955, has "agreed to admit Mitsui Steamship Co. to membership, upon the unconscionable condition, however, that Mitsui withdraw from pending regulatory cases in which its position is opposed to that of the Conference."

What potion does this Conference—to end all conferences—imbibe and becomes so inebriated that it dare attach such onerous and illegal conditions to conference membership in direct violation of the Board's decisions?

Could this Board possibly permit such brazen interference with lawsuits pending before it?

It is significant that this "special meeting" of the Conference was held two (2) days following the public release of the Board's Report in the Japan-Atlantic and Gulf Freight Conference case, Docket 730, which Report held, *inter alia*, that a conference using the exclusive patronage contract/non-contract dual rate system could not bind shippers under the exclusive patronage contracts with respect to F.O.B. or F.A.S. shipments.

That decision of the Board clearly invalidates the Recommended Decision of the Examiner in said Dockets 764 and 773, to which we have filed exceptions, and from which Proceedings the Conference now attempts to slither out from under an inevitable adverse Decision which must necessarily follow from the Board's holding in Docket 730. This deliberate stratagem to avoid a Board decision, and the application to this Conference of the unequivocal and long waited statement of the law therein, is now conceived to force, Mitsui to withdraw its complaint and intervention in pending adjudicatory proceedings, being held pursuant to the Administrative Procedure Act, under the threat of withholding membership in this historically arrogant Cartel. This public display of self-asserted sovereignty and immunity from the provisions of the Shipping Act is taken in the face of the constant reiterations by steamship con-

ference spokesmen and by the Federal Maritime Board that any qualified member—including even Isbrandtsen—would be entitled to membership, and that the Board stands every ready to exert its full power in that direction, holding the penalty of cancelling the Conference Agreement. Thus this conference is deliberately and brazenly attempting to avoid a Board decision involving its use of a practice, which the Board itself has now condemned in Docket 730, and could not fail to condemn here—this defiant attempt to avoid an Order against it, moreover, is taken by the brazen assertion of a power which the Board has said no conference can have.

The very expected dangers which compelled Isbrandtsen to file its Petition to intervene, which were stated specifically therein, may now occur. The American Potash & Chemical Corporation has already "withdrawn" its Complaint in Docket 773, and now the Conference hopes to succeed further by eliminating the Proceedings entirely by forcing Mitsui also to withdraw its complaint in Docket 764 and to withdraw as to intervenor in Docket 773.

We have, of course, no interest in insisting that Mitsui pursue its claim for damages against the Conference, to which claim it seems clearly entitled. We submit, however, that the Conference cannot now be allowed to continue its practice of controlling F.O.B. and F.A.S. shipments under its exclusive patronage contracts, in view of the Board's decision in Docket 730, condemning this practice. In view of the interest already shown by the Department of Justice in these illegal practices by this very conference, the current shenanigans of the predominantly foreign group will undoubtedly excite their further interest.

The clear decision of the Board in Docket 730 should, we submit, leave no doubt that the Board must take immediate steps to halt this illegal practice engaged in by the Pacific Coast European Conference. If Mitsui should decide to withdraw its complaint in submission to the con-

ference pressure, the Board would, of course, review the proposed settlement of the adjudicatory proceedings involved. As an applicant Intervenor in these proceedings, and as an American operator in the trade, Isbrandtsen demands that the terms of any such settlement be publicly disclosed.

In any event, Isbrandtsen's Petition for Intervention in the above-mentioned Proceedings, should be promptly acted upon, and the Board should consider and act upon the Exceptions to the Recommended Decision of the Examiner.

Please advise the undersigned promptly with respect to these inquiries so that I may be in a position to take whatever further steps it may be necessary or advisable to pursue.

Respectfully yours,

ISBRANDTSEN COMPANY, INC.
By JOHN J. O'CONNOR

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v. No. 13027

UNITED STATES OF AMERICA and
FEDERAL MARITIME BOARD,
Respondents.

Affidavit of Lloyd Tibbott

DISTRICT OF COLUMBIA, ss:

LLOYD TIBBOTT, being duly sworn, deposes and says:

I am Chief of the Regulation Office of the Federal Maritime Board. Among other things I have the duty and responsibility to maintain records of conference agreements, tariffs, and rate practices. In addition, I am the chief offi-

cer of the Federal Maritime Board charged with the administration of its regulatory functions.

The following is a list of the more important trades in the foreign commerce of the United States which are covered by steamship conferences using a dual rate contract system but in which common carriers by water operate services outside of the conference. This information has been compiled from the following sources:

1. As to Conferences using contract rates and as to the date when the system was placed into effect, my source is:

   Filings made with the Federal Maritime Board pursuant to the Board's General Order 76. (This order became effective November 11, 1952, and required every conference employing a dual rate system as of that date to file with the Board a statement as to the date when contract/non-contract rates were first established by the conference, together with particulars as to the system and the reasons for its use.)

2. As to non-conference operations in trade covered by conference contract rates, my source is:

   Export rate filings made by common carriers by water in the foreign trade of the United States as required by the Board's continuing order in Docket No. 128 (1 U.S.S.B.B. 470). (This order became effective September 1, 1935, and continued in effect since that date. This order requires every common carrier by water in foreign commerce to file a schedule of its rates and charges for the transportation of property from points in continental United States to foreign ports within a period of 30 days after a rate becomes effective.)

   As to the rate filings made by carriers operating outside an existing steamship conference (non-conference carriers), a further check has been made against sailing cards and other published sailing schedules to

assure that the non-conference line is still in active operation.

Trade: NORTH ATLANTIC—UNITED KINGDOM

Contract Rates in effect since 1923.

Non-Conference Carriers:

Mitsui Steamship Co., Ltd. 10-8-54 to date.

Trade: GULF & SOUTH ATLANTIC—CONTINENTAL EUROPE

Contract Rates in effect since 1930.

Non-Conference Carriers:

Independent Gulf Line. 8-15-55 to date.

Trade: NORTH ATLANTIC—MEDITERRANEAN

Contract Rates in effect since 1925.

Non-Conference Carriers:

Isbrandtsen Co., Inc. 6-1-48 to date.
Costa Line. 12-10-48 to date.
Yugoslav Line. 5-22-47 to date.
Denizcilik Bankasi TAO. 4-12-54 to date.
D. B. Denz Nakliyati TAO. 5-31-55 to date.

Trade: GULF—MEDITERRANEAN

Contract Rates in effect since 1930.

Non-Conference Carriers:

Sidarma Line. 3-28-55 to date.
Fabre Line. 9-17-55 to date.

Trade: ATLANTIC—INDIA, PAKISTAN, CEYLON & BURMA

Contract Rates in effect since 1947.

Non-Conference Carriers:

Isbrandtsen Co., Inc. 1-20-47 to date.

Trade: ATLANTIC—MALAY STATES

Contract Rates in effect since 1931.

Non-Conference Carriers:

Isbrandtsen Co., Inc. 4-17-48 to date.

Trade: ATLANTIC—FAR EAST

Contract Rates in effect since 1929.

Non-Conference Carriers:

Isbrandtsen Co., Inc. 11-1-46 to date.

Trade: PACIFIC COAST—EUROPE (United Kingdom & Continent)

Contract Rates in effect since 1937.

Non-Conference Carriers:

Mitsui Steamship Co., Ltd. 7-1-54 to date.
Hanseatische Reederei Emil Offen & Co. 10-14-55 to date.

Trade: PACIFIC COAST—EUROPE (Mediterranean)

Contract Rates in effect since 1937.

Non-Conference Carriers:

Isbrandtsen Co., Inc. 3-3-50 to date.

Trade: ATLANTIC & GULF/WEST COAST OF SOUTH AMERICA

Contract Rates in effect since 1934.

Non-Conference Carriers:

Compania Maritima y de Comercio del Peru (Peruship). 5-24-55 to date.

.....

Lloyd Tibbott.

Subscribed and sworn to before me this ..... day of December, 1955.

.....

Notary Public,
District of Columbia.

My Commission expires .....

Copy of

FEDERAL MARITIME BOARD

Agreement No. 3103

Approved June 25, 1934

As amended to August 27, 1952

Japan-Atlantic and Gulf Freight Conference Agreement

Conference Membership as of September 16, 1952

American President Lines, Ltd.
(Barber-Wilhelmsen Line)—Joint Service of
Wilhelmsens Dampskibsaktieselskab
A/S Den Norske Afrika—og Australielinie
A/S Tonsberg
A/S Tankfart I
A/S Tankfart IV
A/S Tankfart V
A/S Tankfart VI
Skibsaktieselskapet Varild
Skibsaktieselskapet Marina
Aktieselskabet Glittre
Dampskibsinteressentskabet Garonne
Skibsaktieselskapet Sangstad
Skibsaktieselskapet Solstad
Skibsaktieselskapet Siljestad
Dampskibsaktieselskabet International
Skibsaktieselskapet Manderville
Skibsaktieselskapet Goodwill
Daido Kaiun Kaisha
(De La Rama Lines)—Joint Service of
The De La Rama Steamship Co., Inc.
The Swedish East Asia Co., Ltd.
The Ocean Steam Ship Co., Ltd.
The China Mutual Steam Navigation Company, Ltd.
Nederlandsche Stoomvaart Maatschappij "Oceaan" N.V.

(Ivaran Lines—Far East Service)—Joint Service of
Skibsaktieselskapet Igadi
Aktieselskapet Ivarans Rederi
A/S Besco
A/S Lise
Kawasaki Kisen Kaisha
(Kokusai Line)—Joint Service of
Kokusai Kaiun Kaisha, Ltd.
Iino Kaiun Kaisha, Ltd.
Mitsubishi Kaiun Kaisha, Ltd.
Nissan Kaisen Kaisha, Ltd.
Toho Kaiun Kaisha, Ltd.
Lancashire Shipping Company, Ltd.
Lykes Bros. Steamship Co., Inc.
Mitsui Steamship Co., Ltd. (Mitsui Line)
(A. P. Moller-Maersk Line)—Joint Service of
Dampskibsselskabet af 1912 Aktieselskab
Aktieselskabet Dampskibsselskabet Svendborg
Nippon Yusen Kaisha
Osaka Shosen Kaisha, Ltd.
Prince Line, Ltd.
Shinnihon Steamship Co., Ltd.
(States Marine Lines)—Joint Service of
States Marine Corporation
States Marine Corporation of Delaware
United States Lines Company (American Pioneer Line)
Waterman Steamship Corporation
Yamashita Kisen Kaisha

May 23, 1934

WITNESSETH: That in consideration of the benefits, advantages and privileges to be severally and collectively derived from this agreement, the parties hereto, common carriers by water, hereby associate themselves in a conference to be known as the JAPAN-ATLANTIC and GULF FREIGHT CONFERENCE to promote commerce from JAPAN, KOREA and OKINAWA to UNITED STATES

GULF PORTS and ATLANTIC COAST PORTS of NORTH AMERICA.

1. *Purpose of Agreement:* This agreement covers the establishment, regulation and maintenance of agreed rates and charges, for or in connection with the transportation of all cargo in vessels owned, controlled, chartered and/or operated by the parties hereto in the trade covered by this agreement including cargo transhipped at ports within the scope of this agreement.

2. *Freight Charges:* All freight and other charges for or in connection with such transportation shall be charged and collected by the parties hereto strictly in accordance with rates, charges, classification, rules and/or regulations adopted by the parties and recorded in the tariff or tariffs of the conference. All rates, charges rules and/or regulations, and additions thereto and changes therein, adopted pursuant to the provisions of this agreement, as well as a copy of minutes of all meetings and of all circulars and other conference papers recording action of the parties under this agreement, shall be furnished promptly to the Governmental agency charged with the administration of Section 15 of the United States Shipping Act, 1916, as amended.

3. (a) *Open Rates*: The parties hereto may declare rates on specified commodities to be "Open" and may thereafter declare the rates on such commodities, or any of them, to be "Closed." In the event that the rates on any commodities shall be declared "Open" the conference shall so indicate in its tariff and shall designate the extent to which it shall have relinquished control over the booking and transportation thereof.

(b) *Scale of Rates:* The parties hereto mutually agree that the scale of rates shall be those agreed upon from time to time, and published in the JAPAN-ATLANTIC and GULF FREIGHT CONFERENCE tariffs, reissues thereof and supplements thereto and no party shall engage directly

or indirectly in the aforementioned transportation under terms and conditions other than those herein mentioned.

4. *Non-Conference Representation*: No party hereto shall be represented at any port or ports covered by this agreement, by any agent engaged in the solicitation, booking, receipt and/or documentation of cargoes without requiring such agent to agree that such agent will not represent, except as husbanding agent, any common, private or contract carrier in the trades within the scope of this agreement other than a carrier who is a party to this agreement; and each party hereto agrees to be fully responsible to the other parties hereto for any loss or damage sustained by such other parties by reason of any act or omission of an agent which shall constitute a violation by such agent of this agreement, or would constitute a violation hereof if such agent were himself a party to this agreement; and no party shall act as an agent in the solicitation, booking, receipt and/or documentation of cargoes for any common, contract or private carrier, other than another party to this agreement, in trades within the scope of the agreement; provided, however, that nothing in this agreement shall operate to restrict the right of any party to act as the agent of its Government subject to the understanding that the conference shall be fully informed in advance; with respect to the nature and effect of any such arrangements and same shall be fully recorded in conference minutes; and provided further, that the furnishing of information in violation of the security regulations of its Government shall not be required of any party.

5. *Unfair Practices Prohibited:* There shall be no undue preference or advantages nor unjust or unreasonable discrimination nor unfair practices against any consignor or consignee by any of the parties hereto.

6. *Rebating Prohibited:* (a): The payment of commissions or brokerage of any nature to any party or parties whatsoever, in a direct or indirect manner, is prohibited.

Nothing herein contained shall prohibit the payment of customary fees to duly appointed vessel agents and the payment of not more than 5% (five per cent) commission to sub-agents.

(b): The parties hereto agree that they will have only one office of their own or one agent or sub-agent at any one port in Japan, Okinawa and Korea and inland agents in these territories are prohibited. Agents or sub-agents at any port must have licensed and established ship-handling departments.

7. *Special Privileges Prohibited*: The giving or receiving of special rates or other special privileges or advantages not offered to all shippers shipping under similar conditions is prohibited. Special privilege shall include, but not be limited to, the granting of free or reduced passages, allowance or special accommodation to any place or port for any shipper, consignee or broker, or prospective shipper, consignee or broker, or for any officer, employe, agent, or representative of any shipper, consignee or broker, or prospective shipper, consignee or broker, or to any member of the family of any of the aforesaid.

8. *Absorptions:* The absorption of wharfage, storage, or other charges against cargo is prohibited except as may be agreed between the parties hereto, and shown in the conference tariff.

9. *Sworn Measurers:* Sworn measurers recognized by the conference shall be employed at all ports within its jurisdiction where it may be found practicable for the weighing and/or measuring of all cargo received for shipment on vessels of the parties to this agreement, the cost of such service to be borne by the parties of the conference who carry the cargo thus weighed and/or measured.

10. *Breach of Agreement:* (a): In the event of any violation of this agreement by any of the parties hereto and/or their respective agents, such party or parties shall be sub-

ject to the payment of damages for each and every violation which shall be decided and assessed to the satisfaction of all parties hereto, except the party or parties charged with the violation, but if the party and/or parties hereto committing the alleged violation of this agreement are dissatisfied with the decision come to, such party and/or parties shall have the right to appeal, in which event the question of breach of agreement and damages shall be left to the determination of three arbitrators to be nominated within 30 days from the day on which the appeal of the party and/or parties charged with the violation will be received at the conference office.

One of the arbitrators will be nominated by two-thirds of the parties hereto, except the party or parties charged with the violation, one by the party or parties charged, the third shall be appointed in agreement of the two arbitrators so nominated. The arbitrators shall make their award friendly and the decision of two or more of the arbitrators shall be final and binding on the parties hereto. There shall be no appeal against the award of the arbitrators. All payments of any amounts awarded shall be made to the conference and placed in the general funds of the conference.

(b): In addition to the payment of damages, the offending party at the option of the conference shall be liable to expulsion from the conference or suspension of voting rights for such period of time as the conference may determine. Determination in the first instance as above as to a violation of this agreement and/or of any rules, regulations or tariff provisions of the conference, and whether the penalty shall be expulsion, suspension of voting rights and/or the payment of liquidated damages, and if the latter, the amount thereof, shall be made in accordance with Article 19.

(c): In no case shall the party complained against have any vote in the determination of the foregoing matters. The party complained against shall have the right to be heard and to offer a defense against the accusation even though

such party may not be afforded the right to vote on his guilt or innocence.

(d): No expulsion shall become effective until and unless notice thereof, with a detailed statement of the reason or reasons therefor, shall have been air-mailed or cabled to the Governmental agency charged with the administration of Section 15 of the United States Shipping Act, 1916, as amended. Notice of suspension of voting rights pursuant to this article shall be furnished promptly by airmail or cable to the aforementioned Governmental agency.

11. *Withdrawal:* Any party may withdraw from the conference by giving ninety days written notice of intention to withdraw to the conference; provided, however, that no withdrawal shall affect the liability of a withdrawing party to the conference arising out of any breach of the conference agreement or otherwise, or conference obligation incurred up to the date withdrawal becomes effective and provided further that no party who has served a notice of withdrawal shall be entitled to vote on any conference matter, the decision with respect to which is to become effective after the effective date of such party's withdrawal or is to continue in force beyond such date. Notice of withdrawal of any party shall be furnished promptly by air-mail or cable to the Governmental agency charged with the administration of Section 15 of the United States Shipping Act, 1916, as amended.

12. *Faithful Performance:* (a): As a guarantee of faithful performance hereunder, and of prompt payment of any liquidated damages which may accrue against them or of any award or judgment which may be rendered against them hereunder, the parties hereto agree to deposit with the conference Secretary the sum of Twenty-five Thousand Dollars ($25,000.00) in United States Government bonds, or in United States currency, or surety bond of like amount satisfactory to the conference, which shall be deposited or invested as may be agreed by the parties pursuant to Arti-

cle 19. Any interest accruing thereon shall be for the account of the party making such deposit and shall be remitted promptly to such party if received by the conference. Each of the parties further agrees to deposit additional cash or security upon demand so as at all times to maintain cash or securities or any combination of both of a total market value equivalent in United States currency to the amount hereinabove specified. Such deposits or the proceeds thereof shall be applied to the payment of any liquidated damages imposed in accordance with Article 10 or elsewhere in this agreement, unless otherwise fully paid or previously satisfied.

(b): In the event of the termination of this agreement or the termination of membership or withdrawal of any of the parties hereto, the deposits made by the parties concerned shall be returned to them, together with any accrued interest in the possession of the conference, but only after any indebtedness to the conference has been fully satisfied.

13. *Membership:* Any common carrier regularly operating or giving substantial and reliable evidence of intention to operate regularly in the trades covered by this agreement may become a member of this conference upon the approval by the parties hereto as provided in Article 19 and by affixing its signature to this agreement or a counterpart thereof. No admission to membership shall be effective until air-mail or cable advice thereof has been sent to the Governmental agency charged with the administration of Section 15 of the United States Shipping Act, 1916, as amended. Every application for admission to membership shall be acted upon promptly. No carrier shall be denied admission except for just and reasonable cause, and advice of any denial of admission to membership, together with a statement of the reason or reason therefor, shall be furnished promptly to the Governmental agency charged with the administration of Section 15 of the United States Shipping Act, 1916, as amended.

14. *Rules and Regulations:* (a): Members of the conference hereby organized shall abide, and the conference shall be governed, by the rules and regulations from time to time made by the said conference, which shall include, among other things, provisions in respect to meetings, both regular and special, payment of expenses incurred in the maintenance of the conference, and such other matters as, in the opinion of the members of the conference, are necessary or desirable to further the ends of the conference as set forth herein.

(b): No such rule or regulation or alteration thereof, which constitutes a modification, addition or supplement to this agreement, shall be made effective until it has been approved pursuant to Section 15 of the United States Shipping Act, 1916, as amended.

15. *Admission Fee:* A fee of One Thousand Dollars ($1,000.00) shall be assessed each applicant upon admission or readmission to the conference, no part of which shall be returned except upon dissolution of the conference, in which event all sums of money then remaining in the hands of the conference, after payment of all expenses, shall be divided among the parties as they may determine.

16. *Meetings:* Meetings of this conference shall be held in Tokyo, Japan, or elsewhere, as may be agreed upon by the parties. Regular meetings shall be held once a month. Other meetings may be called at any time by the Chairman and he shall call a meeting whenever requested to do so by any party.

17. *Notice of Meetings:* Except as may be otherwise unanimously agreed by all members entitled to vote, notice of meetings shall be furnished at least twenty-four hours in advance by the Chairman to all parties. Notice shall specify the subjects to come before the meeting and no subject shall come before a meeting unless advance notice thereof has been given as herein required except by the unanimous consent of all parties entitled to vote.

18. *Quorum:* Three-fourths of all parties entitled to vote shall constitute a quorum at all meetings, except when considering changes in this agreement when a quorum shall consist of four-fifths of all parties entitled to vote.

19. *Decisions:* (a): A quorum being present, decisions under this agreement, other than changes in the agreement itself, are to be determined by a two-thirds vote of all parties present and entitled to vote. In cases of changes in this agreement, all parties agree to be bound by changes made with the consent of two-thirds of all parties entitled to vote.

(b): The Chairman shall have authority, with respect to decisions on rate matters, to obtain the votes of the parties by telephone in lieu of meeting in conference. All members entitled to vote must be contacted and their votes obtained in each case. Decisions on matters voted on by telephone shall be made by a two-thirds vote of all parties entitled to vote.

(c): At the request of any member, voting shall be by secret ballot which shall be counted by the Secretary who shall announce the result of the ballot.

20. *Voting Privileges:* Except as otherwise specifically provided in Articles 10 and 26, each party shall have one vote on all matters and shall be represented by an accredited representative at all meetings.

21. *Officers and Duties:* (a): The parties hereto may designate a Chairman and/or other officers and prescribe the duties and the compensation payable thereto. The duties of said officers may be exercised by one and the same person. A minute record shall be kept of the proceedings of all meetings.

(b): *Chairman:* The Chairman shall prescribe at all regular and special meetings of the Conference. Should the Chairman be unable to attend such meetings, the Vice-Chairman shall preside, if a Vice-Chairman has been desig-

nated by the conference. In the absence of both the Chairman and Vice-Chairman, the Deputy Chairman shall preside, if a Deputy Chairman has been designated by the conference. In the absence of all three, a Chairman pro tempore shall be elected for the meeting by the members in accordance with Article 19.

(c): *Vice-Chairman:* If a Vice-Chairman is designated by the conference, he shall perform any duties of the Chairman during his absence.

(d): *Deputy Chairman:* If a Deputy Chairman is designated by the conference, he shall perform any duties of the Chairman in the absence of both the Chairman and Vice-Chairman.

(e): *Secretary:* The conference shall appoint a Secretary who shall carry out the duties assigned to him in this agreement and those assigned to him from time to time by the conference. The Secretary shall be paid such remuneration as may be agreed to by the members.

22. *Executive Committee:* (a): There shall be a standing committee known as the Executive Committee, consisting of five (5) members. The conference Chairman shall be the Chairman of the committee during his term of office. If a conference Vice-Chairman and Deputy Chairman are designated by the conference, as authorized by Article 21, they shall be members of the Executive Committee during their term of office. Other members shall be elected by the parties in accordance with Article 19 to serve for a period of six months.

(b): The duties of the Executive Committee shall be as follows:

(1) To be responsible for the operation of conference office.

(2) To act on urgent matters brought before them with the exception of matters concerning freight rates and

malpractices, and make recommendations to the membership.

(3) On all matters brought before the Committee, they shall decide by a vote of four-fifths of their members as to any recommendations made or action taken by them, including a decision as to whether the matter is of sufficient urgency to warrant immediate action by the committee itself or whether it can safely be, or should be, held for a decision by the entire membership.

23. *Rate Committee:* (a): There shall be a standing committee known as the Rate Committee, consisting of three (3) members. The Chairman shall appoint the members of the Rate Committee who shall hold office during the tenure of office of such Chairman.

(b): It shall be the duty of the Rate Committee to consider all requests for the establishment of new rates and tariff rules or changes in rates and tariff rules and to submit their recommendations thereon in writing through the conference Secretary for consideration at regular or special meetings of the conference.

24. *Committee on Malpractices:* There shall be a Committee on Malpractices, consisting of three (3) members who shall be appointed by the Chairman. If there is a Deputy Chairman designated by the members, as authorized by Article 21, he shall be a member of the Committee on Malpractices and shall serve as Chairman. The Secretary shall be empowered and directed by the Committee on Malpractices to investigate any reported infractions of the conference tariff, rates, rules, regulations, etc. The member lines shall cooperate with the Secretary in the conduct of such investigations and shall make available to him facilities necessary to conduct such investigations. The Secretary shall report the results of all investigations to the Committee on Malpractices for the information of the Committee and such

recommendation for action by the conference as the Committee may deem appropriate.

25. *Special Committees:* In addition to the standing Committees provided for in Articles 22, 23 and 24, there may be such Special Committees as the conference may from time to time establish. The members of all Special Committees shall be appointed by the Chairman and shall hold office during the term of his office.

26. *Maintenance of Service:* (a): Failure of any party to this agreement, to have a sailing in the trades covered by this agreement for a period of ninety consecutive days shall be a suspension of service and any party whose services have been thus suspended shall have no right to vote on any matter within the scope of this agreement, except changes in this agreement, until service has been resumed.

(b): If any party, whose services have been thus suspended, fails to resume service within a period of ninety consecutive days after the termination of the first ninety day period, the conference may, pursuant to Article 19, declare that such party has abandoned service in the trades covered by this agreement. The party whose services are involved shall have no vote in any decision hereunder. In the event of a declaration of abandonment, as herein provided, the party whose service is declared abandoned shall immediately be notified by the conference and thereupon the membership of such party in this conference shall be automatically terminated.

(c): Acts of war, strikes, lockouts, other labor disturbances, or force majeure which may result in a suspension of service or cause for a declaration of abandonment shall be considered by the parties as cause for waiving the penalty provided in this Article. In no event shall a party whose services have been suspended for a period of 180 consecutive days have the right to vote on any matters under this agreement, including changes in the agreement itself, unless such suspension of service is excused by the conference for reasons enumerated herein.

(d): Notice of loss or restoration of voting rights, abandonment of service and waiver of penalties shall be furnished promptly by air-mail or cable to the Government agency charged with the administration of Section 15 of the United States Shipping Act, 1916, as amended.

(e): Resumption of service shall be deemed to have been made as of the date a vessel commences to load at its first port of call in Japan, Korea or Okinawa for a voyage to any port of discharge covered by this agreement.

27. *Expenses of the Conference:* The expenses of the conference shall be prorated among the members as they shall from time to time determine.

28. *Delinquent Members:* A member shall become delinquent upon failure to pay any indebtedness to the conference within thirty days after receipt of notice of such indebtedness.

29. *Consular Invoices and Freight Manifests:* Before issuing Bills-of-Lading, members shall obtain from shippers properly authenticated copies of consular invoices or declarations covering each shipment in accordance with instructions issued from time to time by the Secretary, including any exceptions on commodities for which consular visas are required. Such invoices, together with true copies of freight mainfests prepared by the members and duly certified by such members, shall be filed with the office of the Secretary within fourteen days after the sailing of the vessel involved from its last port of loading in Japan; any information so filed with the office of the Secretary shall not be used in violation of Section 20 of the United States Shipping Act, 1916, as amended.

30. *Divulgence of Conference Proceedings Prohibited:*

(a): It shall be the rigid duty of each member to maintain secret and confidential the nature of all questions and matters which may come before the conference, either for consideration or decision thereon. Divulgence of such information to persons other than members of the conference

shall subject any offending member to a fine, the amount of which shall be determined by the conference but which may not, for any single offense, exceed One Thousand Dollars ($1,000.00). The offending member shall not cast any vote in the determination of the application of a fine or the amount thereof pursuant to this Article.

(b): The provisions of this Article shall include, but not be limited to, the making public of any confidential conference documents.

(c): If the conference shall be unable to determine responsibility for a violation of this Article by means of a poll of the members, the matter may, upon request of any conference member, be placed in the hands of an outside confidential agency selected by the conference to trace and determined at conference expense, the identity of the offending party or parties.

(d): All publicity concerning conference affairs, proceedings and discussions shall be disseminated only by the Secretary and under instructions from the Chairman.

31. *Responsibility for Acts of Agents and Sub-Agents:* Members shall be responsible for the acts of their agents and sub-agents in maintaining both the spirit and the letter of the conference agreement and tariff, and conference rules and regulations issued thereunder.

32. *Conference Liability:* If a member shall incur legal expenses as a result of compliance with this agreement, or any rule or regulations issued thereunder, such expenses and any damages incurred by such member arising out of legal proceedings shall be for the account of the conference and shall be pro-rated equally among the parties to this agreement; provided, however, that the conference shall determine that such expenses or damages are incurred by the member without fault upon its own part and provided, further, that such member shall report the institution of legal proceedings against it, or the threat thereof, to the conference prior to taking any action thereon individually.

33. *Party to Other Agreements:* Any carrier becoming a member of this conference shall thereby become a party to, and any carrier withdrawing from conference membership shall thereby cease to be a party to, any agreements between the member lines of the conference (jointly entered into by said member lines in their capacity as conference members), and any other carrier or other person subject to the United States Shipping Act, 1916, as amended, provided said agreements are filed and approved pursuant to the provisions of said Act and contain specific provisions for such admission to or withdrawal from participation therein.

34. *Section 15 Approval:* This agreement is subject to approval by the Governmental agency charged with the administration of Section 15 of the United States Shipping Act, 1916, as amended.

35. *Modification or Cancellation:* No modification or cancellation of this agreement, or any part hereof, shall be valid or binding upon the parties hereto unless and until it has been filed with and approved by the Governmental agency charged with the administration of Section 15 of the United States Shipping Act, 1916, as amended, and shall not be carried out in whole or in part prior to such approval.

IN WITNESS WHEREOF the parties have hereunder set their hands this tenth day of May, 1934.

For the Mitsui Bussan Kaisha
23rd May, 1934

Per pro MITSUI BUSSAN KAISHA, LTD.
(Sgd.) T. Furukawa
Manager, Freight Department

For the Barber-Wilhelmsen Line

Per pro DODWELL & Co., LTD.
(Sgd.) F. J. Horman Fisher
Shipping Department
Agents.

To The

FEDERAL MARITIME BOARD

Statement

of

Japan-Atlantic and Gulf Freight Conference

Filed Pursuant to Title 46, Chapter II, Subchapter B, Part 236, Section 236.3 of the Code of Federal Regulations, Being Paragraph 3 of Federal Maritime Board General Order 76.

The Japan-Atlantic and Gulf Freight Conference (hereinafter referred to as the Conference), acting pursuant to Federal Maritime Board Agreement No. 3103, as amended, in the trade from Japan, Korea and Okinawa to United States Gulf ports and Atlantic Coast ports of North America (hereinafter referred to as the Conference Trade), proposes to establish contract/non-contract rates in the Conference Trade and files this Statement with the Federal Maritime Board, in compliance with the directions set forth in the regulatory provision mentioned and referred to in the above caption.

This statement is based upon information obtained from official records in Japan, from the home office of the Conference in Tokyo, from the records of members of the Conference, and from information obtained in various Japanese cities by a representative of the Conference sent from the United States to Japan for the express purpose of ascertaining the facts.

A

THE AMOUNT OF THE SPREAD OR DIFFERENTIAL

The amount of the proposed spread or differential between contract and non-contract rates is 9½% of the contract rate applicable to the respective commodities and/or classes of commodities, for the transportation of which both contract and non-contract rates are made available in the proposed Conference tariff, rounded off to the nearest quarter of a dollar.

B

THE EFFECTIVE DATE

The effective date of the contract/non-contract rates shall be the thirtieth day, computed according to United States Eastern Standard Time, following the date of the filing of this statement with the Federal Maritime Board.

C

THE REASONS FOR THE USE OF CONTRACT/NON-CONTRACT RATES IN THE CONFERENCE TRADE AND THE BASIS FOR THE SPREAD OR DIFFERENTIAL BETWEEN SUCH RATES

1. THE REASONS FOR THE USE OF CONTRACT/NON-CONTRACT RATES IN THE CONFERENCE TRADE

(a) GENERAL

The reasons for the use of the contract/non-contract system in the Conference Trade flow from a number of factors, including the following: (i) the historical facts relative to the Conference and its predecessors; (ii) the stability of rates over long periods, which the Conference has been able to assure merchants engaged in exporting or importing in the Conference Trade; (iii) the increasing frequency and progressive improvement of the services rendered to the shippers by Conference members, due to competition among the members, notwithstanding uniformity of tariff rates, rules, and conditions; (iv) the rate of practices of non-

Conference competitors of a type which has been repeatedly condemned by predecessors of this Board; (v) the disruption of Conference carryings caused thereby and the consequent imminent danger that rate stability, which is vital to merchants and carriers alike, will be destroyed unless the curative effects of the contract/non-contract system of rates may be introduced.

(b) The Historical Facts Relative to the Conference and Its Predecessors

As will appear more fully from Exhibit A, hereto attached, the following agreements have successively provided for the maintenance of a conference in the Conference Trade:

Agreement Number	Date of Approval
73	February 16, 1926
129	September 4, 1929
154	May 13, 1931
3103	June 25, 1934

(c) The Stability of Rates Over Long Periods—Former Contract/Non-Contract Systems in the Trade

(i) *Long Term Stability*

Throughout the period of the conferences operating under the successive agreements referred to in Item (b) above, the conferences afforded to the exporters of Japan and the importers of the Atlantic and Gulf Coasts of the United States a very high degree of stability of rates over long periods of time. Attached hereto, marked Exhibit B, and made a part hereof, is a tabulation of the rates applicable to nine specific commodities and to the cargoes included in the classification of general cargo (n. o. s.). The specific commodities selected are among those which move in the greatest volume in the Conference Trade. The rates applying to these commodities and this classification are those which appear in all of the successive tariffs of the Conference and its predecessors which a thoroughgoing search,

at this date and after the disturbances due to World War II, has disclosed.

There are absent from this tabulation the rates which were established in tariffs numbered 7 and 9. Tariff No. 6, which is the first available Conference tariff, is not dated. However, it bears internal evidence that it was adopted at some date between Febraury 1, 1928, and December 31, 1928.

There are also missing all tariffs before tariff No. 6. However, we have been able to procure from the records of Nippon Yusen Kaisha which, with the exception of the war years, was a member of each of the successive conferences in this trade from 1926 to date; evidence to establish the level of rates from February 16, 1926, to the date when tariff No. 6 became effective with respect to the classification of cargo (n. o. s.) and with respect to two of the important commodities included in Exhibit B, *i. e.*, cheap porcelain and celluloid toys.

From the tariffs which are available and from the data obtained from Nippon Yusen Kaisha, the pattern of stability is well established. This record completely disproves the theory, advanced by some, that the Conference assures merchants stability only during the period of advance notice which Conference freight contracts establish as that which must be given to the shippers before rates can be increased. This Exhibit establishes that, although such periods of advance notice may be stated in days or months, the stability created by Conference action must, with the exception of periods of exceptional political or economic turbulence, be stated in years.

The Board will, we are sure, take official notice of the circumstance that during the twenty-six year period between 1926 and 1952 there have been varying and frequent fluctuations in the world charter markets for tonnage. These market fluctuations delicately reflect the rise and fall in the relative supply and demand for tonnage. During these periods, despite these fluctuations and the rise and fall in

demand, the Conference rates have stood firm and, over long periods, have provided the merchants dealing in the Conference Trade with a stable and non-speculative transportation factor in their export costs.

In order to assist the Board in an analysis of Exhibit B, we shall trace the rate movement of the first item appearing on that Exhibit, *i. e.*, cheap porcelain. This item is also one of the commodities which moves in greatest volume in the Conference Trade.

Reference to Exhibit B demonstrates that from February 16, 1926, to September 1, 1934, the rate on this item was $10.50 per measurement ton.[1] On September 1, 1934, the contract system was made effective and cheap porcelain was accorded a contract rate of $8 and a non-contract rate of $11 per measurement ton. Those rates remained effective until May 1, 1935. From May 1, 1935, to May 1, 1937, cheap porcelain enjoyed a contract rate of $9 and a non-contract rate of $12 per measurement ton.[2] From May 1, 1937, to October 1, 1939, (see footnote 28 of Exhibit B) the rates on cheap porcelain continued to be $10 contract and $12 non-contract per measurement ton. As of September 14, 1939, contracts for the carriage of porcelain were cancelled and the non-contract rate of $12 was charged for ships leaving Japan on and after October 1, 1939. This Conference action was taken because of the outbreak of the war in Europe which, of course, required some of the Conference members due to the diversion or requisition of their tonnage by their respective governments, to terminate or curtail their services. The performance of the rates after the outbreak of the European war and right up to the termination of commercial intercourse between the United

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[1] As stated above, tariff No. 7 is not available. However, as indicated in footnote 11 of Exhibit B, the rate of $10.50 per measurement ton continued in effect during the period above stated.

[2] As is shown in footnote 23 of Exhibit B, from July 1, 1936, to May 1, 1937, a contract rate of $10.00 per measurement ton and a non contract rate of $13.00 per measurement ton to Gulf Coast ports was established. With the coming into effect of tariff No. 12, on May 1, 1937, the same rate became applicable to both U. S. Atlantic and Gulf Coast ports.

States and Japan is, perhaps, as eloquent a demonstration of the stability which the conference system, and particularly the contract/non-contract system of rates, affords to the public as any that can be found in shipping annals. Exhibit B indicates that on December 1, 1939, the contract rate on cheap porcelain was fixed at $12 per measurement ton, and this rate continued for eight months to July 1, 1940. On July 1, 1940, the contract rate was advanced a mere 50¢ per measurement ton, to $12.50. The non-contract rate remained static at $14.50 per measurement ton, and these rates continued until the commerce between the affected countries came to an end.

The first post-war rate for cheap porcelain was established on May 1, 1948, at $39.25 per measurement ton. This rate continued effective, however, only for a period of about three weeks (see footnote 39 of Exhibit B), when the rate was reduced to $30 per measurement ton. The rate continued at $30 per measurement ton from May 26, 1948, until August 30, 1950, (see footnote 45 of Exhibit B) when it was reduced to $25. The $25 rate continued in effect until February 15, 1951, when it was increased to $28.75 per measurement ton. On April 25, 1951, although the rate remained the same, the rate basis was changed from a measurement ton to a short ton or a measurement ton, whichever would yield the greater revenue (see footnote 48 of Exhibit B). That basis and that rate continued from April 25, 1951, to November 15, 1952, when, in anticipation of the adoption of a contract/non-contract system in accordance with General Order 76, a rate for cheap porcelain was adopted which was substantially lower than the rate which was in existence immediately prior to November 15, 1952, and, indeed, the proposed non-contract rate on this item is substantially below the pre-existing tariff rate.

The record of stability of rates for the transportation of cheap porcelainware is the rule and not the exception. With some variations, a similar record will be found in the study of rates of the other items enumerated in Exhibit B.

Stability of rates is of maximum importance to merchants engaged in the Conference Trade. Without such stability they are unable to make forward commitments and to lay business plans with any certainty that their enterprises will not go awry due to the speculative character of the transportation factor in their costs. This proposition applies to the exporters from Japan, Korea and Okinawa and with equal force to the American importers who compete with domestic producers and with sources of supply in other foreign lands, as well as with each other.

(ii) *Previous Conference Contract/Non-Contract Systems*

Not the least cause for the exceptional stability which has characterized the rates in the Conference Trade has been the traditional employment by the Conference of the contract/non-contract system.

The earliest Conference tariff to which access may now be had, *i. e.*, tariff No. 6, and which was in effect prior to December 31, 1928, provided contract and non-contract rates for three items: canned crabs, lily bulbs and tea. These rates were as follows:

Item	Contract	Non-Contract
canned crabs	$10.50	$14.50
lily bulbs	15.00	20.00
tea	9.50	12.00

Tariff No. 8, which went into effect on November 1, 1930, indicates the following contract/non-contract rates:

Item	Contract	Non-Contract
canned crabs (and other canned fish)	$10.00	$14.50
electric bulbs	9.00	14.00
lily bulbs	11.00	20.00
tea	9.50	12.00
toys	9.00	14.00

All of the above rates were on a basis of 40 cubic feet.

It will be observed that both dollarwise and percentagewise the spreads between contract and non-contract rates in tariffs numbered 6 and 8 were not uniform.

Although no copy of tariff No. 9 appears to be extant, we have located a circular addressed to Japanese shippers which refers to the issuance of tariff No. 9 on November 15, 1931. The circular enumerates 22 different items to which contract and non-contract rates were made applicable and states that "Non-contract rates will be approximately 30% higher than contract rates". The circular also included a form of Conference freight contract. We attach hereto, mark Exhibit C, and make a part hereof, a copy of the aforesaid circular.

As will appear from Exhibit B, hereto attached, tariff No. 10, which went into effect on September 1, 1934, appears to be the first Conference tariff in which contract and non-contract rates were assigned to the entire range of important commodities. With the exception of the brief period of a few months following the outbreak of the European War, this practice continued from May 1, 1935, until the termination of commercial intercourse between Japan and the United States in 1941.

As also may be gathered from Exhibit B, in none of the successive tariffs does there appear to be any pattern, either from the standpoint of dollars and cents, or from the standpoint of percentages, according to which the spread or differential between the contract and non-contract rates were promulgated, excepting only with respect to tariff No. 15, which became effective on December 1, 1939. In that tariff there appears to have been a differential of 20% of the contract rate, rounded off to the nearest half dollar.

It seems probable that the contract/non-contract rates have been in effect in the Conference Trade as long as they have in any trade in the import or export commerce of the United States.

In none of the tariffs does there appear to have been a spread, however determined, as low as the spread of 9½% of the contract rates, which it is now proposed to introduce. Under the contract/non-contract system, with the spreads as above described, the export trade from Japan to the United States flourished to the advantage of both countries.

(d) The Increasing Frequency and Progressive Improvement of Service by Conference Members

A mere reference to the number of lines which are operating and which have operated in the Conference Trade, in itself, is sufficient to demonstrate that the conference system, including, over a considerable period, the contract/non-contract rate system, has had the effect of stimulating, improving and increasing the service rendered to the merchants engaged in the Conference Trade. As appears from Exhibit A, there were only three signatories to Agreement No. 73, the first Conference agreement in this trade, which was finally approved on February 16, 1926. Likewise there were only three parties to Agreement No. 129, the second Conference agreement in this trade, which was approved on September 4, 1929. There were, however, four signatories to Agreement No. 154, the third Conference agreement in this trade, which was approved on May 13, 1931, and, during the succeeding two years, two additional lines were admitted to Conference membership. The fourth agreement in this trade, No. 3103, which was approved on June 25, 1934, and which, with amendments, is presently in force, was signed by eight lines.

Due to the numerous admissions and withdrawals to and from membership of this Conference in the intervening years, all of which appear on Exhibit A, there are today in the Conference no less than eighteen members. Within the recollection of those, acting on behalf of the Conference, by whom this Statement is being prepared, at no time in the history of the successive Conferences has any appli-

cant who was ready, able and willing to render a regular and dependable service in the Conference Trade been denied membership. Conference membership would be available to the Isbrandtsen Company, Inc., (hereinafter referred to as Isbrandtsen) which is the only non-Conference line which now appears to be rendering a regular service.

Accurate records of the number of sailings of the Conference vessels in the early days are not available at the time of the preparation of this Statement. However, the frequency and regularity of service furnished by the Conference lines during the post-war period from January, 1949, is evidenced by Exhibit D, hereto attached, and made a part hereof.

But the increase in the frequency and regularity of sailings does not tell the entire story of the improved service offered by the Conference lines to the merchants engaged in this trade.

Prior to 1929 the vessels operating in the Conference Trade were not so constructed as to adapt them to the special requirements of the trade. Generally speaking, their speed was 9 to 10½ knots. Their bale capacity was in the region of 400,000 cubic feet. They had no reefer capacity and no silk rooms. In the 1930's, the Conference members entered into and completed programs for the construction of vessels which were especially adapted to this trade. They had speeds in the range of 14 or more knots. They had deadweight capacity, in many cases, considerably in excess of 9,000 tons. Their bale capacity, in all cases, was much greater than was true of the earlier vessels and, in certain cases, exceeded 600,000 cubic feet. Most of the vessels of many of the lines had reefer capacity, for the transportation of food products from Japan, and strong rooms, especially adapted for the carriage of raw silk, silk goods and and other valuable cargoes.

The competitive improvement of vessels and services among the member lines continued up to the outbreak of

World War II. At that time certain of the lines had vessels in the service capable of a speed of 18 knots and speeds of 15 to 17 knots were not uncommon. Since the conclusion of the war, the improvement of vessel types, especially adapted to the Conference Trade, continued, and only recently the vessel of one of the Conference members performed a voyage from Japan to New York in 26 days elapsed time and 24 days, 4 hours steaming time. This vessel is capable of a speed of 21 knots and steams fully loaded at 17½ knots.

It is unnecessary to stress here the tremendous investment which has been made in the construction of these fleets of modern cargo vessels.

Therefore, although the effect of Conference action has been to eliminate competition among the Conference members with respect to freight rates, rules and conditions, it has turned the competition into a race to give to the Japanese exporter and the American importer ever-improving vessels and service. It is unnecessary here to dwell on the advantages to the merchants engaged in the Conference Trade which flow from this accelerated and progressively improving service. Naturally, the Conference members would not have made the heavy investments necessary to provide these improvements unless they had expected that conditions would prevail which would permit them to remain in business.

(e) The Practices of Non-Conference Competitors

The only non-Conference liner competitor since the conclusion of the war has been Isbrandtsen.[3] This company instituted its service in the Conference Trade in or about June, 1947. Since that time it has openly followed the general policy of quoting rates which are 10% below the corresponding Conference rates, rounded off to the nearest 5 cents. Complete and illustrative evidence of this practice

[3] Please refer to Exhibit G, footnote 1.

on Isbrandtsen's part appears from a tariff issued by Hothership, Isbrandtsen's General Agent in Tokyo, which tariff bears the caption "Abbreviated Freight Tariff". A copy of this abbreviated freight tariff, issued as of June 25, 1952, is hereto attached, marked Exhibit E, and made a part hereof.

The competitive character of Isbrandtsen's rate cutting apears without qualification from Exhibit E. There will be found in parallel columns, quotations of Conference rates to the Pacific Coast and Isbrandtsen rates to the Pacific Coast (including both local rates and overland rates), and Conference rates to the Atlantic Coast as well as Isbrandtsen's rates to the Atlantic Coast.

A check of the item numbers on Exhibit E indicates that in substantially all cases the Isbrandtsen tariff carries the same "Item No." and description for each commodity as the Conference tariff.

The impropriety of this appeal to the shipping public on the basis of tariffs computed by the application of a fraction to the tariffs of a competitor has been established in unmistakable language by the decisions of the predecessors of the Federal Maritime Board.

> Docket No. 128, *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470, 498, 501 (1935);
>
> Docket No. 512, *Cargo to Adriatic, Black Sea, and Levant Ports*, 2 USMC 342, 345 (1940).

Evidence of the continuance of this practice is not wanting. Prior to the promulgation of General Order No. 76, the Conference had announced the adoption of contract and non-contract rates, effective on November 15. Isbrandtsen did not procrastinate in announcing to the public its own rate policy, predicated upon the new rates which the Conference had announced. Isbrandtsen circularized the trade with an announcement dated November 14, 1952, a copy of

which is hereto attached, marked Exhibit F, and made a part hereof, the essence of which was as follows:

"WE ARE HAPPY TO ANNOUNCE TO ALL OUR SHIPPERS THAT OUR NEW RATE EFFECTIVE S. S. 'FLYING CLOUD' WILL BE 10% LESS THAN THE CONFERENCE CONTRACT RATE"

According to the same circular, the "Flying Cloud" was scheduled to sail from Yokohama at midnight on November 17, 1952.

There can therefore not be the slightest doubt as to the impropriety of Isbrandtsen's rate practices in the Conference Trade.

Isbrandtsen, however, had not alone the advantage of quoting rates fractionally under the Conference rates. It also benefited by the stability created by the rate practices of the Conference. So long as the Conference has been willing to stand for long periods by its promulgated tariffs, Isbrandtsen could quote cut rates for like periods and thus assure to those shippers who have used its service the same ability to depend on forward rate stability as they would enjoy if they had shipped their goods by Conference tonnage. This stability and this advantage, as well as the advantage of rate cutting, would disappear once the Conference should disband or should declare its rates open. As Isbrandtsen's above practices have more and more greatly impinged upon the business of the Conference lines and as the press for drastic Conference action to meet Isbrandtsen's practices has become more and more imperative and insistent, the need for the contract system to prevent an all-out rate war has become evident to all.

Isbrandtsen instituted its service in or about June, 1947, on a schedule of one sailing a month. By virtue of its rate cutting practices, under the umbrella of the Conference policy of stable rates, this non-Conference competitor has drawn to itself an inordinate portion of the cargoes being transported in the Conference Trade.

Although prior to the year 1952 Isbrandtsen, from time to time, had two and three sailings a month, it appears definitely to have established a schedule of two sailings a month in or about August, 1951; and to have increased this schedule to three sailings a month in August, 1952. It now appears that Isbrandtsen is contemplating an increase in its service to one per week.

An article by Richard P. Cook appeared in the issue of the Wall Street Journal for Friday, November 14, 1952, which stated that it was based upon interviews with Mr. Hans Isbrandtsen, the President of Isbrandtsen, and other persons in the Isbrandtsen organization. In this article, among other statements, appears the following with relation to around-the-world service which includes the trade from Japan to United States Gulf and Atlantic ports:

"The company is soon increasing this service to a sailing every ten days and may later move to one a week."

A Conference representative has further reported that Mr. Hans Isbrandtsen, during his recent visit in Japan, stated to Japanese shippers that the company expected to increase its service to one sailing per week.

As would be expected in the light of known principles of steamship economics, Isbrandtsen has obtained very satisfactory cargoes for its increasingly numerous sailings. Attached hereto, made a part hereof, and marked Exhibit G, is a schedule comparing the total non-Conference carryings (Isbrandtsen) with the total Conference carryings in revenue tons from June, 1951, to September, 1952, both months inclusive. In this Exhibit will also appear, in column 5, the percentage of total liner carryings transported by non-Conference vessels and in column 6 the percentage of total liner carryings transported by Conference vessels. In column 7 appears the number of Conference members with sailings during the respective months and in column 8 the average percentage of the total liner carryings per Conference member with sailings during the relevant month. At the foot of columns 2, 3 and 4 will be found total figures

which embrace the carryings from June, 1951, to September, 1952, both months inclusive. The aggregate liner carryings during this period amount to 456,310 payable tons. Of this, the Conference members carried the aggregate of only 316,618 revenue tons or 69.4% of the total (foot of column 6); whereas, Isbrandtsen alone carried 139,692 revenue tons or 30.6% of the total (foot of column 5). An examination of columns 5 and 8 indicates that in many months Isbrandtsen has carried well above one-third of all of the liner carryings; whereas, the Conference members who had sailings in the respective months on the average have not carried as much as 10% since the month of June, 1951.

Perhaps the most significant figures in Exhibit G are those which appear in footnotes 4 and 5. There it appears that the average carryings of Conference vessels have been 1,208.5 revenue tons; whereas, the average carryings of Isbrandtsen vessels have been 4,989.8 tons per sailing.

Exhibit H sets forth statistics of tramp carryings in the Conference Trade for the months of March and September in the years 1949 to 1952, inclusive. Exhibit H (footnote 1) also indicates, to the extent that the data is available, the rates charged for carriage on the tramps and the Conference tariff rates at the times when the respective tramp vessels were operated. The Exhibit indicates the extent to which the Conference lines are subjected to tramp competition in addition to the non-Conference liner competition.

The Conference members are of the view that if a system of contract/non-contract rates were introduced in accordance with the proposal set forth in this statement, a very considerable addition to liner carryings would be effected.

(f) Conclusion

The above statements and the Exhibits A to H inclusive demonstrate beyond peradventure that the Conference, over the years, has been devoted to the rendition of a regular, frequent and dependable service in the Conference Trade,

and to the maintenance of stability of rates which is necessary to the conduct of business in that trade.

Since 1948 the Conference members, despite the investment of huge sums in the construction of especially adapted and speedy vessels for operation in the Conference Trade, have seen their business inordinately impaired by a non-Conference competitor, whose competitive method is the cutting of rates by a general policy of uniformly deducting a fraction from Conference rates. As above stated, this competitive method has been soundly condemned by the agencies charged with the administration of the Shipping Act, 1916, as amended. The non-Conference competitor has been able to increase his sailings from one to three a month and is now preparing to increase his sailings to one per week.

Upon recognized principles of steamship economics, there is not the slightest doubt that if the Conference lines continue to maintain the stability which has prevailed even under the Isbrandtsen assault upon their business, Isbrandtsen will be able further to increase its sailings until it will have gained a virtual monopoly of all of the carryings in the Conference Trade.

It is clear that the Conference members cannot permit this course to continue. Due to the necessary delays in the institution of the contract system and the constant disturbances in the Conference Trade, a move has already been suggested by Conference members who are wholeheartedly devoted to the conference principle, that the time has arrived to declare all rates open so that the Conference members shall be able to compete with Isbrandtsen on a rate basis.

Many of the Conference members recall their experience with meeting Isbrandtsen on the basis of cut rate for cut rate, in the out-bound Far East Trade, with the resultant rate war. The history of this experience was written large in the records of the predecessor of the Federal Maritime

Board, in Docket 128, 1 U.S.S.B.B. 470 (1935); and we refer to the portion of Docket 128 which deals with the rate war in the outward trade corresponding to the Conference Trade. We respectfully request that that portion of the report in Docket 128 be incorporated herein, and made a part hereof. Such a rate war is an imminent reality, unless the curative effects of a contract system may be applied to this troubled arm of the commerce of the United States.

The reasons for the use of contract/non-contract rates in the Conference Trade are, therefore, these: (i) to enable the Conference members to continue in business in the Conference Trade, notwithstanding non-Conference rate practices; (ii) to enable the Conference members to continue the policy of investing increasingly large sums in modern, speedy and efficient vessels, especially adapted to service in the Conference Trade; (iii) to enable the Conference members to continue, in the future, the record of stability of rates over long periods of time, in accordance with the traditional Conference policy, as demonstrated by Exhibit B, so as to insure the progressive growth and prosperity of commerce between Japan and the Atlantic and Gulf Coasts of the United States; (iv) to prevent the outbreak of a rate war which is bound to result if the Conference lines meet Isbrandtsen's rate cuts with corresponding rate cuts—all to the great detriment of the carriers themselves and to the commerce which it is their duty to serve.

2. The Basis for the Spread or Differential in the Conference Trade

(a) General

A statement of the basis for the spread or differential in the Conference Trade requires the statement both of principles of law and considerations of fact. We shall deal with these two classes of substantive matters in the order above stated.

(b) Principles of Law

The legal basis for the establishment of contract and non-contract rates, with respect to the same commodities, is to be found in the opinion of Mr. Justice Stone in *Swayne & Hoyt, Ltd.* v. *United States,* 300 U. S. 297 (1937). At page 303, Mr. Justice Stone stated that without explanation and reason the assessment of different charges for identical services and facilities would be undue and unreasonable discrimination. His language in this particular follows:

"The differential between appellants' rates on commodities transported under contract and the rates on the same commodities for non-contract shippers was *prima facie* discriminatory since the two rates were charged for identical services and facilities, and the narrow issue presented to the Secretary for decision was whether, in the conditions affecting the traffic involved, the discrimination was undue or unreasonable."

The learned Justice did not, however, leave unanswered the question of the factual issue to be determined in deciding, in each particular case, whether the spread between the contract and non-contract rates is undue and unreasonable. Thus, he stated, at page 304:

"In determining whether the present discrimination was undue or unreasonable the Secretary was called upon to ascertain whether its effect was to exclude other carriers from the traffic, and if so, whether, as appellants urge, it operated to secure stability of rates with consequent stability of service, and, so far as either effect was found to ensue, to weigh the disadvantages of the former against the advantages of the latter."

It is clear from the foregoing that a spread of rates might be justified if stability of rates is requisite and desirable, even if the effect might be "to exclude other carriers from the traffic". Where, as here, there is no desire or intent to exclude any competitor, Conference or non-Conference, from the traffic, but merely to prevent non-Conference competitors from taking away all of the business of the Con-

ference lines by improper rate cutting practices, the question of whether the spread is undue or unreasonable substantially answers itself. Nor can it be stated that any spread, however wide, is unreasonable *per se* because it is adopted for the purpose of preventing Conference line shippers from patronizing the non-Conference competitor.

In *United States Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474 (1932), the case came up on a demurrer to the complaint. Therefore, the Supreme Court was required to consider all of the allegations of the complaint to be true. As appears at pages 479 to 480, the allegations of the complaint included the following:

"The conspiracy involves the establishment of a general tariff rate and a lower contract rate, the latter to be made available only to shippers who agree to confine their shipments to the lines of respondents. *The differentials thus created between the two rates are not predicated upon volume of traffic or frequency or regularity of shipment, but are purely arbitrary and wholly disproportionate to any difference in service rendered, the sole consideration being their effect as a coercive measure. The tariff rate in numerous instances is as much as one hundred per cent higher than the contract rate.* The disproportionately wide spread of these differentials is wholly arbitrary and unreasonable. The respondents have put into effect what is called a scheme of joint exclusive patronage contracts, by which shippers are required to agree to ship exclusively by their lines, and to refrain from offering any shipments to petitioner. Unless they so agree, the shippers are forced to pay the far higher general tariff rates. This plan is resorted to for the purpose of coercing shippers to deal exclusively with respondents and refrain from shipping by the vessels of petitioner, and thus exclude it entirely from the carrying trade between the United States and Great Britain." (Italics supplied.)

Thus the Supreme Court was considering a complaint which alleged that the differentials in some cases amounted to 100% of the contract rate and that the differentials were wholly disproportionate to any difference in service ren-

dered. Nevertheless, the Court held that it would be competent for the Shipping Board, upon a proper showing of historical and economic facts, to determine that a contract system, with such differentials, is legal and proper.

In *United States* v. *Far East Conference*, 342 U. S. 570 (1952), the case again came before the Court on a motion to dismiss the complaint. There, too, therefore, the Supreme Court was required to take as true all of the allegations in the complaint. In the *Far East* case, the complaint alleged that "By their combined economic power, exerted through the aforesaid *coercive rate differentials*, the defendants [Conference members] have, pursuant to the combination and conspiracy herein alleged, induced and compelled shippers in the outbound Far East trade to enter into freight agreements with the defendant Far East Conference * * *." (Italics supplied.) Nonetheless, the Supreme Court reaffirmed the doctrine of *United States Navigation Co.* v. *Cunard S. S. Co.*, that the Board might, upon proof of proper economic and historical facts, approve the action of the Conference members.

Nor did *Isbrandtsen Co., Inc.* v. *United States*, 96 F. Supp. 888 (1951), affirmed by an evenly divided court, *sub nom., A/S J. Ludwig Mowinckles, Rederi* v. *Isbrandtsen Co., Inc.* and *Federal Maritime Board* v. *United States*, 342 U. S. 950 (1952), change the law on this subject. Judge Frank, speaking for the three-judge District Court, there merely held:

"But the Board has made a finding, and the evidence before the Examiner shows that the announced contract and non-contract rates of the conference carriers, acting pursuant to the dual-rate provisions of the conference agreements, were such that the spread between those rates was arbitrary."

The above language of Judge Frank referred to an item of testimony which characterized as arbitrary the manner in which the differential there involved had been arrived at.

His opinion did not purport to determine what type of spread might be reasonable and justifiable upon any other record or in any other conference trade. His opinion attempted to lay down no general principle of law governing the spread between contract and non-contract rates. If Judge Frank had attempted to state that a 20% rate differential was illegal and unreasonable *per se*, he would have been flying in the face of the decision of the Supreme Court in *United States Navigation Co.* v. *Cunard S. S. Co.* and would have been reaching a conclusion at variance with the later decision of the Supreme Court in *Far East Conference* v. *United States.*

The affirmance of Judge Frank's opinion by an equally divided court deprives that decision of all authority in any other cases.

In *United States* v. *Pink*, 315 U. S. 203, 216 (1942), the Supreme Court, in considering the effect of an affirmance, by an evenly divided court, said:

"Nor was our affirmance of the judgment in that case by an equally divided court an authoritative precedent. While it was conclusive and binding upon the parties as respects that controversy (*Durant* v. *Essex Company*, 7 Wall. 107), the lack of an agreement by a majority of the Court on the principles of law involved prevents it from being an authoritative determination for other cases. * * *"

The effect of an affirmance by an evenly divided court was similarly stated in *Hertz* v. *Woodman*, 218 U. S. 205, 212-215 (1910).

It follows that even if the District Court in the *Isbrandtsen* case had attempted to lay down any general principles of law affecting the quantum of a spread, it would have no governing effect here. There is, therefore, no legal basis upon which it can be contended that the Board should not here approve the spread between contract and non-contract rates in the amount of 9½% of the contract rates.

There is one other matter of law to which it is essential to call the Board's attention, before proceeding with the factual data applicable to the Conference Trade.

In matters of rate making, the question of reasonableness is not and cannot be a matter of finding a single pinpoint at which the spread between rates is reasonable and above or below which it ceases to be reasonable. The courts have dealt with reasonableness in matters of rate making as constituting a band, zone, or area so that any pinpoint, as it were, within the band, would be reasonable.

An illustrative case is *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U. S. 246 (1951), in which the Court said (at p. 251):

"Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint. It allows a substantial spread between what is unreasonable because too low and what is unreasonable because too high. To reduce the abstract concept of reasonableness to concrete expression in dollars and cents is the function of the Commission. It is not the disembodied 'reasonableness' but that standard when embodied in a rate which the Commission accepts or determines that governs the rights of buyer and seller. A court may think a different level more reasonable. But the prescription of the statute is a standard for the Commission to apply and, independently of Commission action, creates no right which courts may enforce."

This same doctrine also found expression in *Georgia* v. *Pennsylvania Railroad Co.*, 324 U. S. 439 (1945), where the Court said (at pp. 460-1):

"The fact that the rates which have been fixed may or may not be held unlawful by the Commission is immaterial to the issue before us. The *Keogh* case indicates that even a combination to fix reasonable and non-discriminatory rates may be illegal. 260 U. S., p. 161. The reason is that the Interstate Commerce Act does not provide remedies for the correction of all the abuses of rate-making which might constitute violations of the anti-trust laws. *Thus a 'zone of reasonableness exists between maxima and minima*

within which a carrier is ordinarily free to adjust its charges for itself.' United States v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 506." (Italics supplied.)

The task before the Board in the consideration of this Statement is, therefore, not to find that the spread of 9½%, here proposed, is the *only* spread which would be reasonable. Its task is to determine whether the 9½% spread is within that zone, band, or area of reasonableness which the law, as well as common sense, dictates to be the standard of reasonableness which must be applied to the function of rate making; for rates and the spread between rates must be fixed by practical men in the competitive arena of international shipping, and not in the laboratory of the scientist or the ivory tower of the philosopher.

(c) Factual Considerations

i) *General*

There are certain factual considerations which must be taken into account in connection with determining whether any spread is or is not reasonable. These considerations help to set the boundaries around the area within which any spread might be determined to be reasonable. In the instant case we not only have the guidance of these general considerations, but also have the factors which enable this Conference to pinpoint 9½% of the contract rates as that focus in the general area of reasonableness at which the spread must be established. We shall consider, first, those factual elements having to do with the area of reasonableness and, secondly, those which led to the determination of the 9½% proposal.

ii) *Reasonableness from the Standpoint of the Shipper*.

We have noted above that Isbrandtsen openly and notoriously conducts its business on the basis of rates computed at 10% below the corresponding Conference rates. It has announced its intention, upon the adoption of the contract

system by the Conference, of charging 10% below Conference contract rates.

These circumstances offer to the Japanese shipper an alternative: either to ship all of his commodities by Conference tonnage at contract rates, or to ship as great a volume as possible of his shipments by Isbrandtsen's vessels at 10% below contract rates and to ship the balance of his requirements by Conference tonnage at non-contract rates. If the shipper chooses to use cut rate Isbrandtsen service to the maximum extent, he still has the advantage of employing the speedy, regular and well-equipped Conference services, when it serves his interests to do so.

Under such circumstances the shipper is confronted with alternatives which, in each case, may require a nice balancing of the advantages of becoming a contract shipper against the advantages of remaining a non-contract shipper. The proposed non-contract rate is 9½% above the proposed contract rate. Isbrandtsen has announced that its rates will be 10% under the proposed contract rate. The shipper will, therefore, compare these two figures in determining whether or not he desires to become a contract shipper. On the side of remaining a non-contract shipper, he will place such advantages as he may attribute to complete freedom of action. On the side of becoming a contract shipper he will place the advantages to himself and to the commerce of his country, which derive from long term stability of rates.

From this standpoint, it becomes immediately apparent that the proposed 9½% spread is the minimum which could be regarded as in any way likely to accomplish the recognized advantages of the contract/non-contract system of rates as stated in the *Swayne & Hoyt* case. A very considerably higher differential, percentagewise, would definitely fall within the area of reasonableness.

(iii) *Reasonableness from the Standpoint of the Carrier*

The question of reasonableness of spread, from the carrier's standpoint, has two principal aspects. First, the interaction between spread, additional cargo attracted, and reduction in operating costs per unit of cargo. Under existing conditions, above described, the vessels of the Conference lines are not able to fill all of the cargo space which they are prepared to allocate to Japan. Necessary and irreducible operating costs (hereinafter referred to as Fixed Costs) must, therefore, be allocated to the units of cargo carried. As the cargoes increase, the same Fixed Costs being allocated among a greater number of units show a decrease per unit. Conversely, as cargoes decrease, the same Fixed Costs, being allocated among a lesser number of units, exhibit an increase per unit. What these Fixed Costs are varies according to the type of vessel, her age, the scale of wages of her officers and crew and numerous other factors.

Reference again to Exhibits G and H indicates the possible aggregate carryings to which the Conference members may legitimately aspire, entirely disregarding the probable increase in the overall commerce between Japan and the United States. Taking into consideration the cargo which the Conference members are confident the re-institution of the contract system will return to their services, it is the opinion of the Conference that the decrease in Fixed Costs per unit of cargo which will result from the re-institution of the contract system will justify the 9½% spread.

Another consideration, from the standpoint of the carriers, must be taken into account. Hereinabove, we have delineated the development of the Conference carriers—the provision for exceptional speed, the reefer capacity, the silk rooms, and the vast increase in the bale capacity. The commerce between Japan and the United States cannot prosper unless the Conference lines can find economic inducement toward progressively more modern tonnage, always espe-

cially adapted to the requirements of the trade. Inducement to such progress can be found only in the assurance to the Conference carriers of a continuous and dependable volume of cargo, such as that which would be shipped by the shippers of Japan, pursuant to contracts entered into under tariffs providing for a consideration of a minimum of 9½% spread between contract and non-contract rates.

(iv) *Reasonableness from the Standpoint of Both Shipper and Carrier*

The tariffs providing for contract and non-contract rates, which the Conference is proposing by this Statement, were not prepared by the Conference in any hasty attempt to meet the grievous situation which has been prevailing due to the Isbrandtsen competition. The tariff is the result of a study instituted by the Rate Committee of the Conference. This study occupied a period of approximately two months. The tariff which the Committee proposed and which the Conference adopted is not, in any sense, makeshift. It is not based solely upon pre-existing rates. It is the result, rather, of a study of the competitive conditions involving the movement of the respective commodities enumerated in the tariff.

The Board will recall that, in October, 1950, the Conference undertook that it would not institute a contract/non-contract system except upon sixty days' prior notice to the Board. This sixty days' notice was given to the Board on or about September 15, 1952, prior to the promulgation of General Order 76. The sixty days mentioned in the notice expired on November 14th. It was during this sixty day period that the Conference Committee, above referred to, performed its principal labors. But for the promulgation of General Order 76, the contract/non-contract system would have become effective on November 15, 1952.

Due, however, to be the promulgation of General Order 76 on November 11, 1952, the Conference did not put its new

contract/non-contract system into effect on November 15. Inasmuch, however, as the merchants interested in the Conference Trade had been informed of the new contract rates which would have become effective under the contract system but for the foregoing circumstances, the Conference has made available the rates which would have become the contract rates on November 15 had the system gone into effect on that date.

It is our conviction that a comparison between the level of the proposed new non-contract rates and the old tariff rates which had been in effect immediately prior to November 15, 1952, tells an eloquent story. Comparison between the new proposed non-contract rates and the old tariff rates indicates that, with respect to thirteen commodities, the new non-contract rates are equal to the old tariff rates; that with respect to 131 items the new non-contract rates are lower and, in a major portion of the instances, substantially lower than the old tariff rates; that with respect to 173 cases the new proposed non-contract rates are higher than the old tariff rates; but in the preponderant majority of these cases the amounts of the excess are 25¢, 50¢, 75¢ or $1.00.

Annexed hereto and marked Exhibit I is a table indicating the frequency distribution of each difference, positive and negative, between the old tariff rate and the corresponding proposed new non-contract rate.

From Exhibit I it is apparent that in the main the new non-contract rates do not vary substantially from the old tariff rates; that there are only a very few instances in which the new non-contract rates are substantially higher than the old tariff rates; and that there is a very considerable number of commodities with respect to which the new non-contract rates are drastically below the old tariff rates.

Inasmuch as, during the period from June, 1951, to September, 1952, both inclusive, 69.4% of the cargoes in the Conference Trade has been moving at the old tariff rates

(see Exhibit G), it immediately becomes apparent that the new non-contract rates are rates at which cargoes will freely flow in the Conference Trade, particularly inasmuch as those who pay these rates have the corresponding advantage of shipping by non-Conference or tramp tonnage at will. Likewise, since the proposed new contract rates are substantially as low as, or lower, than the pre-November 15th Isbrantsen rates at which (during the same period) approximately 30.6% of the traffic in the Conference Trade has been moving (see Exhibit G), it is obvious that cargoes will flow freely at the new contract rates. We have here, then, two rates which have been standing side by side, at each of which substantial amounts of cargo have been flowing in this very trade. There, therefore, can be no question, not alone that both of these rates fall within the area of reasonableness for rates but also that the differential between these two reasonable levels of rates itself falls within the area of reasonableness for the spread or differential between rates.

(v) *The Basis for the Selection of 9½% as the Exact Differential*

Under the foregoing heads, we trust that we have demonstrated that 9½% of the proposed contract rates is a spread or differential which, together with spreads or differentials computed on perhaps a considerable number of other formulae, would have fallen within the zone or area of reasonableness for spreads. Some formulae which would have resulted in spreads considerably in excess of that here proposed would have found justification in reason and in the economic factors which affect the commerce from Japan to the Atlantic and Gulf Coasts of the United States.

The differential of exactly 9½% of the contract rate, rather than any of the other differentials which might thus have been justified, was arrived at for two reasons: First, it cannot be over-emphasized that the carriers in the Conference Trade are subject to regulation, not only by the

Federal Maritime Board, pursuant to the Shipping Act, 1916, as amended, and the Merchant Marine Acts, but also by the Fair Trade Commission of Japan and by the Japanese Ministry of Transportation, under statutes duly adopted by the legislative body of Japan.

The Conference has been advised by William Logan, Esq., that the aforesaid Japanese authorities cannot reasonably be expected to regard favorably any spread or differential in excess of 9½%, at this time. Mr. Logan, resident in Tokyo, Japan, is a member of the firm of Hunt, Hill and Betts, Esqs., having law offices in New York, N. Y., and in Tokyo. Mr. Logan, who was retained by the Conference to advise it in regard to the aspects of Japanese law having to do with the adoption of the contract system, is conducting all proceedings before and in connection with the Japanese authorities, having to do with or arising out of the adoption of the contract system.

Second, a consultation with representatives of a considerable number of Japanese shippers and representatives of shippers' organizations in Japan, has elicited the information that the exporters in the Conference Trade regard a differential of approximately 10% as reasonable; as being, generally speaking, in accord with discounts allowed commercially in Japan to so-called "regular good customers". Such shippers and shippers' representatives were particularly favorable to the exact differential of 9½% for the reason that the same differential had been introduced since the adoption of the aforesaid laws by a number of other Conferences involving most important segments of the Japanese foreign trade.

D

COPY OF THE FORM OF CONTRACT PERTAINING TO THE PROPOSED CONTRACT/NON-CONTRACT RATES

Attached hereto and marked Exhibit J is a copy of the form of contract which will be tendered to the shippers in the Conference Trade.

Dated: December 23rd, 1952.

JAPAN-ATLANTIC AND GULF FREIGHT CONFERENCE
By JAMES A. DENNEAN
James A. Dennean, U. S. Secretary
and Authorized Official

STATE OF NEW YORK
COUNTY OF NEW YORK ss.:

JAMES A. DENNEAN, being first duly sworn, deposes and says: That he is an authorized official, to wit: the Secretary for the United States, of the Japan-Atlantic and Gulf Freight Conference, and is the person who signed the foregoing Statement, on behalf of said Conference; that he has read the Statement and that the facts set forth without qualification are true, and that the facts stated therein upon information received from others, affiant believes to be true.

JAMES A. DENNEAN.

Sworn to before me this
23rd day of December, 1952.
JOSEPH CATALANOTTO
Notary Public, State of New York
Qualified in Kings County
No. 24-5650425
Certs. filed with Queens, New York
Bronx, Richmond, Westchester
Suffolk & Nassau Co. Clerks
Queens, New York, Kings, Bronx Reg's
Commission expires March 30, 1954

(CIRCULAR)

EXHIBIT C

MITSUBISHI SOKO KAISHA
Yokohama.

TRANS-PACIFIC FREIGHT CONFERENCE OF JAPAN
JAPAN-ATLANTIC COAST FREIGHT CONFERENCE

Dear Sirs:

With a view to stabilizing the freight market for the benefit of all parties concerned and at the same time taking into consideration the interests of the supporters of the Conference lines named below, we have pleasure in announcing to your goodselves that the Tariffs of the Trans-Pacific Freight Conference of Japan and the Japan Atlantic Coast Freight Conference have been thoroughly revised and brought up to date and both Tariffs are to be placed under joint general Contract Scheme.

The new Tariffs, which are to become effective as from the 15th inst., are now being printed and will be distributed as soon as they are ready, but in the meantime we hasten to intimate to your goodselves the general outline of the new tariffs as follows:—

(1) With a few exceptions, Contract and Non-Contract rates have been established on every commodity in the Tariffs.

(2) Contract rates on many commodities have been reduced as will be seen from the following list, whereas the Contract rate on all other commodities remain the same as in the present Tariffs.

Trans-Pacific Tariff

Commodity	Coast Current Rate	Coast New Contract Rate	Overland Current Rate	Overland New Contract Rate
Antimony Ware	U.S.G. $10.00	U.S.G. $ 9.00	U.S.G. $ 0.75	U.S.G. $0.70
Bamboo blinds, etc.	6.00	5.00	0.60	0.50
Brushes	13.00	12.00	1.25	1.10
Brush Handles	13.00	12.00	0.70	0.65
Calcium Cyanide	6.00	5.00	——	5.00
Camphor	12.00	8.00	——	8.00
Chillies	13.00	10.00	13.00	10.00
Cotton Goods	9.50	8.50	1.10	1.00
Earthenware, etc.	4.00	3.00	0.50	0.40
Hats (Formosa and Panama)	20.00	12.00	3.00	2.00
" (Straw and P. leaf)	9.00	5.00	2.00	2.00
" (N. O. S.)	20.00	13.00	3.60	2.50
Hemp Braid, etc.	13.00	10.00	1.25	1.25
Lacquered Ware	8.50	7.00	0.85	0.75
Menthol Crystal	16.00	16.00	1.50	1.20
Oil (essential)	16.00	16.00	1.50	1.20
" (Camphor)	16.00	8.00	16.00	8.00
" (in bulk)	8.00	6.00	8.00	6.00
Onions	7.00	6.50	——	6.50
Oysters	7.00	6.00	7.00	6.00
Paper Articles	8.00	7.50	1.10	0.90
Pyrethrum Flowers	6.00	5.50	0.30	——
Sand	6.00	3.00	——	3.00
Silk Goods, Fuji and Pongee	18.00 plus ½%	15.00	2.25	2.00
Skins and Furs	20.00 plus ½%	15.00 plus ½%	20.00 plus ½%	15.00 plus ½%
Steel Bar, etc.	7.00	5.00	7.00	5.00
Tea Dust	5.00	4.50	5.00	4.50

Atlantic Tariff

Commodity	Current Rate	New Contract Rate
Bamboo Rakes	U.S.G. $10.30	U.S.G. $ 9.00
Bean Cake and Meal	10.00	8.00
Camphor	12.00	10.00
Chillies	30.00	20.00
Festoons	10.00	7.00
Hats (Panama, etc.)	16.00 or 2%	16.00
" (Straw)	16.00	8.00
Hides	12.00	10.00
Oil (Vegetable and Fish)	9.00	8.00

EXHIBIT C

MITSUBISHI SOKO KAISHA
Yokohama.

Commodity	Current Rate	New Contract Rate
Oil (Camphor	U.S.G. $16.00	U.S.G. $10.00
" (Bean and Fish in bulk)	15.00	10.00
" (other oil in bulk)	17.00	13.00
Palm Leaves	13.00	12.00
Seeds Meal	9.00	8.00
Tea Dust	10.00	9.50
Cheap Porcelain	10.50	8.00
Earthenware	10.50	8.00
Paper Articles	10.50	10.00
Metal Ornaments	10.50	10.00
Wooden Ware	10.50	10.00
Lacquered Ware	10.50	10.00
Pin Cushion	10.50	10.00

(3). Non-Contract rates will be approximately 30% higher than Contract Rates.

(4) Other terms and conditions are as per the Contract Form attached hereto.

We would esteem it a favour if you would be good enough to sign the Contract Form herewith submitted, as soon as possible to enable us to make arrangements for putting the new Tariffs into force on the aforementioned date of 15th inst:

Yours faithfully,

American Mail Line
Barber-Wilhelmsen Line
Canadian Pacific S. S. Ltd.
Dollar Steamship Line
"K" Line
Kokusai Kisen Kaisha
Nippon Yusen Kaisha
Osaka Shosen Kaisha

For and on behalf of the Trans-Pacific Freight Conference of Japan:

Barber-Wilhelmsen Line
Dollar Steamship Line
Kokusai Kisen Kaisha
Nippon Yusen Kaisha
Osaka Shosen Kaisha

For and on behalf of the Japan Atlantic Coast Freight Conference

TRANS-PACIFIC FREIGHT CONFERENCE OF JAPAN
JAPAN-ATLANTIC COAST FREIGHT CONFERENCE

MEMORANDUM OF AGREEMENT, whereby the undersigned Conference steamship Lines agree to carry and the undersigned Shippers and Exporters, their subsidiary Companies or Agents, agree to ship exclusively by vessels of the said Conference Steamship Lines from Japan Ports all commodities to the destinations and at the Contract rates of freight or Ocean proportional rate of freight as set forth in the respective Tariffs No. 9 issued November 15th, 1931, supplements thereto or reissues thereof.

THIS AGREEMENT and all rates and conditions expressed in the respective Tariffs No. 9 to be effective November 15th, 1931 and to remain in effect for one year subject to the terms of clause in paragraph No. 4.

The Non-Contract rates of freight for shipments as set forth in the Trans-Pacific and Japan-Atlantic Tariffs No. 9 referred to above will be strictly applied by all the undersigned Conference Steamship Lines on shipments by Shippers or Exporters not signatory hereto, or who do not, in accordance with this agreement, confine all their shipments to vessels of the Conference Steamship Lines.

Ninety days notice shall be given to the undersigned Shippers and Exporters before the undersigned Conference Steamship Lines alter the rates of freight above referred to.

American Mail Line
Barber-Wilhelmsen Line
Canadian Pacific S. S. Ltd.
Dollar Steamship Line
"K" Line
Kokusai Kisen Kaisha
Nippon Yusen Kaisha
Osaka Shosen Kaisha

Barber-Wilhelmsen Line
Dollar Steamship Line
Kokusai Kisen Kaisha
Nippon Yusen Kaisha
Osaka Shosen Kaisha

For and on behalf of the Trans-Pacific Freight Conference of Japan.
K. Watanabe
Secretary

For and on behalf of the Japan-Atlantic Coast Freight Conference.
K. Watanabe
Secretary

We confirm our acceptance of the foregoing contract.

.....
Shippers

Date .....

.....
Address

Note:—Shippers are requested to note that until further notice the Mitsui Bussan Kaisha Shipping Department are participating carries[*sic*] with the Conference Lines.

EXHIBIT D

Conference Sailings in the Conference Trade*

Month		Total	Month		Total
Jan.	1949	10	Dec.	1950	11
Feb.	"	9	Jan.	1951	11
Mar.	"	10	Feb.	"	14
Apr.	"	7	Mar.	"	15
May	"	9	Apr.	"	10
June	"	7	May	"	13
July	"	9	June	"	12
Aug.	"	6	July	"	16
Sept.	"	10	Aug.	"	19
Oct.	"	12	Sept.	"	18
Nov.	"	11	Oct.	"	12
Dec.	"	8	Nov.	"	18
Jan.	1950	8	Dec.	"	18
Feb.	"	9	Jan.	1952	14
Mar.	"	8	Feb.	"	18
Apr.	"	10	Mar.	"	15
May	"	15	Apr.	"	12
June	"	13	May	"	15
July	"	11	June	"	17
Aug.	"	13	July	"	19
Sept.	"	12	Aug.	"	20
Oct.	"	15	Sept.	"	19
Nov.	"	15			

* These records are based on Statistics of Cargo Movements From Japan published monthly by the Conference for the period from January 1949 to the present, the issue for September, 1952, being the latest thus far published.

In order to qualify as one sailing, a carrier, who at any given time, was a member of the Conference must have berthed a vessel at one or more Japanese ports and have actually loaded cargo destined for U. S. Atlantic and/or U. S. Gulf Coast Ports. In the case where a vessel may have loaded cargo at two or more ports and such loading extended from the end of one month into the next, credit for the sailing was given to that month in which the vessel was present in the majority of the Japanese ports of call. If this resulted in an equal division between two months, the month within which the vessel called at Yokohama, the principal Japanese port, was credited with the sailing. If this still did not result in a credit to one of two months, the first call at Yokohama was decisive. For the months of January, 1949, and September, 1952, the first and last months, respectively, covered herein, all sailings which could not be connected with sailings during the subsequent and prior months, respectively, were credited to January, 1949, and September, 1952, respectively.

A number of the carriers who were, from time to time, members of this Conference, were also members of the Trans-Pacific Freight Conferenc of Japan. As members of the latter Conference they berthed vessels which carried cargo, destined for Atlantic and Gulf Coast Ports, to Pacific Coast ports whence it was trans-shipped by inter-coastal carrier to its ultimate destination. These events are not given weight in the above computations.

A number of Conference members operated in the trade from Japan to Atlantic and Gulf Coast Ports by utilizing the Suez Canal. Pursuant to the definition of one sailing, herein stated, these are not given any weight in determining sailing opportunities in the Conference Trade, above, unless cargo actually moved to a Conference destination.

Commodity	Rate Basis	Conference Pac.	Conference O.C.P.	Conference Atl.	Isbrandtsen Pac.	Isbrandtsen O.C.P.	Isbrandtsen Atl.	Item No.
Agar Agar	W/M	$32.25		$42.00	$29.05		$37.80	9
Aluminum Manufactures of (excluding sheets, bars and ingots)	W/M	33.00		36.75	29.70		33.10	10a
Aluminum, N. O. S. (incl. Scrap)	2240 lbs. or 40 cft.	20.75	$18.75	23.75	20.75	$18.75	23.75	10
Antimony Ware	W/M	36.25		45.00	32.65		40.50	15
Artificial Flowers, value not exceeding $150.00 per ton W/M	W/M				22.55	19.15	28.90	25a
Artificial Flowers, value exceeding $150.00 per ton W/M	W/M	26.50	22.50	34.00	23.85	20.25	30.60	25
Bags (Shopping), Chip, Grass, Paper & Straw	W/M	23.50	23.00	31.25	21.15	20.70	28.15	40
Bamboo, also Wooden Blinds, Screens and Shades, incl. semi-manufactures thereof	W/M	25.00	23.00	30.00	23.00	21.75	27.00	45
Bamboo Brushes, Scrub (Sasara)	W/M	24.25		32.50	21.85		29.25	48
Bamboo Dryers, Lamp Stands, Rakes, Scrapers	W/M	21.25	20.00	30.50	19.75		27.75	50
Bamboo Poles and Sticks, Plain, Raw, with no Metal or other attachments	W/M	20.00	18.75	28.00	18.00		25.50	53
Bamboo Ware, N. O. S.	W/M	25.00	23.00	32.25	23.00		29.50	55
Baskets, Chip: Easter, Willow and N. O. S.	W/M	22.75	21.25	31.25	20.75	19.25	28.50	65
Beer	W/M	28.50		36.50	25.65		32.85	89
Binoculars and Opera Glasses, value $500.00 or more F. O. B. Japan loading port, per ton 40 cft.	W/M	53.75		69.75	48.40		62.80	102
Braid, Chip and Straw, incl. manufactures thereof N. O. S.	W/M	32.75	30.00	39.75	29.50	27.00	35.80	120

Commodity	Rate Basis	Conference			Isbrandtsen			Item No.
		Pac.	O.C.P.	Atl.	Pac.	O.C.P.	Atl.	
Braid, Hemp and Pedaline	W/M	$47.75	$42.50	$61.50	$43.00	$38.25	$55.35	122
Braid, Paper and Wool	W/M	46.75		61.25	42.10		55.15	124
Braid, N. O. S.	W/M	46.75		61.25	42.10		55.15	126
Brass N. O. S. (Incl. Scrap)	2240 lbs. or 40 cft.	20.75	18.75	23.75	20.75	18.75	23.75	127
Brass Ware	W/M	36.25		45.00	32.65		40.50	128
Brass Castings and Stampings (for plumbing purposes), incl. Aluminum Pipe Fittings	W/M	24.50		28.50	22.05		25.65	129
Cameras	W/M	53.75		69.75	48.40		62.80	169
Canned Bamboo Sprouts, Canned Fish and Shell Fish, Canned Fruits, Canned Jams, Canned Vegetables	W/M	39.75	37.75	50.50	35.80	34.00	45.45	175
Canned Foodstuffs, N. O. S.	W/M	48.75	43.00	61.50	43.90	38.70	55.35	182
Cargo N. O. S. (Articles not otherwise specified in Index)	W/M	48.25		56.25	43.45		50.65	191
Carvings, Bone	W/M	30.00	26.00	37.50	27.00	23.40	33.75	193
Chemicals, N. O. S. (Non-Dangerous, Non-Inflammable, Non-Corrosive)	W/M	36.75		47.25	33.10		42.55	216
Chillies	W	74.25		85.00	66.85		76.50	221
Chip Blinds	W/M	32.75		42.00	29.50		37.80	225
Clocks and Watches	W/M	53.75		69.75	48.40		62.80	235
Cotton Manufactures: Bags, Blankets, Canvas, Gloves, Hosiery, Napkins, Napkin Sets, Piece Goods, Table Cloths, Towels, Twine, Wearing Apparel, Yarn and N. O. S.	W/M	32.50		47.50	29.25		42.75	260
Cotton and Rayon Manufactures: Bed Spreads, Damask Sets, Elastic Web, Napkins, Napkin Sets, Table Cloths and N. O. S.	W/M	53.00	45.25	68.50	47.70	40.75	61.65	270
Cotton and Staple Fibre Mixed Goods; Cotton and Staple Fibre Mixed Yarns	W/M	53.00	51.75	68.50	47.70	46.60	61.65	275

Commodity	Rate Basis	Conference			Isbrandtsen			Item No.
		Pac.	O.C.P.	Atl.	Pac.	O.C.P.	Atl.	
Dangerous Cargo, N. O. S.	W/M	$146.25		$190.75	$131.65		$171.70	290
Dolls, Bisque	W/M	27.50	$23.50	35.00	24.75	$21.15	31.50	297
Drugs, Medicines, Patent Preparations, etc.	W/M	68.25		83.25	61.45		74.95	300
Easter Novelties: Cotton and Rayon Bunnies, Chicks, etc. includes Valentine, St. Patrick's, Washington's Birthday, etc. Souvenirs and Articles	W/M	25.00	21.00	32.50	23.00	19.00	30.00	312
Electrical Bulbs, incl. X'mas Tree Electric Bulbs	W/M	28.50		36.50	25.65		32.85	315
Feathers	M	47.50	39.75	53.75	42.75	35.80	48.40	332
Ferro Chromium, Ferro Manganese, Ferro Phosphorus, Ferro Silico Manganese, Ferro Silicon Manganese	W/M	28.25		34.00	25.25		30.60	340
Ferro Tungsten	W/M	65.00		52.00	58.50		46.80	341
Festoons	W/M	23.50	22.50	31.25	21.15	20.25	28.15	347
Fireworks (As described by U. S. Dept. of Commerce in Miscellaneous Series No. 92, "Stowage of Ship Cargoes", Item 1514 of Issue 1920, supplements or additions thereto)	W/M	42.00	39.00	47.75	37.80	35.10	43.00	353
Fishing Guts, Bamboo Fishing Poles, Lines and Parts; Fishing Poles	W/M	53.25		69.25	47.95		62.35	360
Ginger, Dried	W/M	39.75		45.00	35.80		40.50	383
Glass Manufactures: Ash Trays, Lamp Stands and Parts, and N. O. S. for cheap Stem Ware, see Item No. 675	W/M	29.50		37.50	26.55		33.75	385
Groceries and Provisions (not canned goods)	W/M	38.25		49.25	34.45		44.35	408
Hair, Animal, including Horse and Rabbit	W/M	33.75		45.75	30.40		41.20	412

Commodity	Rate Basis	Conference Pac.	Conference O.C.P.	Conference Atl.	Isbrandtsen Pac.	Isbrandtsen O.C.P.	Isbrandtsen Atl.	Item No.
Hardware, viz., Screws, Padlocks, Bolts and Nuts, Window Fittings and Hinges of Iron or Brass	W/M	$37.00	$35.00	$45.00	$33.30	$31.50	$40.50	421
Hats, Chip and Straw	W/M	31.25		39.25	28.15		35.35	427
Household Goods (See Rule 22)	W/M	44.75		69.00	40.30		62.10	447
Imitation Pearl Bracelets and Necklaces	W/M	53.75		69.75	48.40		62.80	461
Insect Powder	W/M	43.75		57.50	39.40		51.75	467
Iron Wire and Steel Wire, incl. Wire Rods	W	24.00		32.00	21.60		29.80	479
Lacquer Ware, N. O. S.	W/M	35.50	31.50	44.75	31.95	28.35	40.30	500
Lamp Shades; Lamp Shades, Paper	W/M	43.25		55.25	38.95		49.75	505
Lanterns	W/M	27.00	20.75	33.75	24.30	18.70	30.40	507
Lanterns, Hurricane	W/M	36.25		45.00	32.65		40.50	508
Linen Goods	W/M	53.75	46.00	66.50	48.40	41.40	59.85	525
Loofahs	W/M	43.25		57.00	38.95		51.30	527
Lumber, Loose	M Bft.	47.75		67.25	43.00		60.55	529
Lumber, viz: Bundled—not more than 400 F. B. M. or less than 350 F. B. M. each, weight not exceeding 1500 lbs.	M Bft.	45.00		41.00	40.50		36.90	530
Machinery	W/M	30.75		42.75	27.70		38.50	531
Machines, Sewing; Heads & Parts	W/M	30.75		42.75	27.70		38.50	532
Mats, Table, Grass and Straw	W/M	19.75	18.50	27.00	17.80	16.65	24.30	555
Matting; Matting, Chip	W/M	19.75	18.50	27.00	17.80	16.65	24.30	557
Metal Ware, N. O. S.	W/M	36.25		45.00	32.65		40.50	580
Microscopes, Toy	M	43.75		57.50	39.40		51.75	582
Minimum Charge for One B/L	B/L	14.25		21.25	14.25		21.25	586
Monosodium Glutamate or "Ajinomoto"	W/M	53.75		69.75	48.80		62.80	593
Naphthalene	W/M	36.25		40.00	32.65		45.00W	599
Needles; Phonograph Needles; Needles and Threaders	W/M	39.75		49.50	35.80		44.55	601

Commodity	Rate Basis	Conference Pac.	Conference O.C.P.	Conference Atl.	Isbrandtsen Pac.	Isbrandtsen O.C.P.	Isbrandtsen Atl.	Item No.
Novelties and Ornaments, Tissue Covered (Silk, Rayon, Cotton Mixed, Leather and Imitation Leather), Boxes, Bags, Cases, Pincushions, Emery Bags, etc.	W/M	$30.00	$26.00	$37.50	$27.00	$23.40	$33.75	603
Oil, Fish and Vegetable, in Containers (not including Fish Liver, Shark Liver or Whale Liver Oil)	W/M	30.00		38.50	27.00		34.65	613
Oil, Fish Liver, Shark Liver and Whale Liver, in containers: including Fish or Sea Animal Oils, blended								
8,000 units USP or lower	W/M	33.75		44.75	30.40		40.30	614
8,001 units to 15,000 units USP	W/M	45.25		57.75	40.75		52.00	
15,001 units to 25,000 units USP	W/M	60.25		76.75	54.25		69.10	
25,000 units USP and over	W/M	103.25		111.50	92.95		100.35	
Paper Manufactures:								
Cellophane, Fans, Filter, Jam Jars, Napkins, Shaving Articles N. O. S.	W/M	37.00	35.00	45.50	33.30	31.50	40.95	635
Cellophane Paper (New York Only)	W/M						32.50	635a
Personal Effects	W/M	44.75		69.00	40.30		62.10	662
Pipe, Cast Iron	W/M	21.50		30.25	19.35		27.25	65
Pipe Fittings, Malleable Cast Iron	W/M	32.75		41.50	29.50		37.35	667
Pipe, Steel	W/M	25.75		33.75	23.20		30.40	669
Porcelainware, Earthenware, Chinaware, Crockery, Rockingham Ware, including Manufactures of the foregoing, viz., Ash Trays, Dolls and toys, Lamp Stands (without metal equipment and wiring), Novelties, Ornaments, and Pottery, Value not exceeding $100.00 per 40 cft.	W/M	23.25	21.75	28.75	20.95	19.60	25.90(1)	675
Value exceeding $100.00 but not exceeding $275.00 per 40 cft.	W/M	28.00	27.00	34.50	25.20	24.30	28.25(2)	
Value exceeding $275.00 per 40	W/M	38.75	37.75	45.25	34.90	34.00	40.75(3)	

Remarks: Isb. only will take different valuation of $125.00 for rate (1). For Cheap Stemware. Value not exceeding $125.00 Isb. will apply the rate (1)

[3*sic*4]

Commodity	Rate Basis	Conference			Isbrandtsen			Item No.
		Pac.	O.C.P.	Atl.	Pac.	O.C.P.	Atl.	
Rackets, Shuttlecocks and Nets, Tennis and Badminton	W/M	$42.75		$50.75	$38.50		$45.75	691
Rags, Cotton, Roofing and Wiping	W/M	20.25	$18.25	27.00	18.25	$15.45	24.30	693
Rayon Manufactures: Elastic Web, Gloves, Mats, Piece Goods Wearing Apparel and Yarn, N. O. S.	W/M	53.00	57.00	68.50	47.70	40.75	61.65	705
Rayon and Woolen Mixed Goods	W/M	52.00		68.25	46.80		61.45	711
Rubber Articles, N. O. S. incl. Tennis and Beach Balls	W/M	36.25		47.25	32.65		42.55	728
Rugs: Cotton, Jute, Paper, Rag, Rice Straw and Straw Fibre	W/M	20.25	18.25	27.00	18.25	16.45	24.30	745
Rugs, Ramie and Wool, Staple Fibre & Wool	W/M	36.00		46.00	32.40		41.40	747
Rugs, Ramie, Ramie & Wool, Rayon, and Wool	W/M	44.00	42.00	60.00	39.60	37.80	54.00	750
Sake	W/M	45.75		61.25	41.20		55.15	755
Shoyu	W/M	37.75		49.25	34.00		44.35	784
Silk Piece Goods (Woven with Fibre, wholly or chiefly of Silk Tussah, Dupion and/or Spun Silk)	W/M	75.50		93.75	67.95		84.40	792
Silk Wearing apparel incl. Mufflers Handkerchiefs and Scarves	W/M	89.00		111.25	80.10		100.15	795
Silk Noils and Silk Waste (excluding Silk Noils Piece Goods)	W/M	43.00	37.25	53.25	38.70	33.55	47.95	797
Silk, Mixed spun and Staple Fibre Yarn	W/M	71.00		93.25	63.90		83.95	799
Silk, Raw, Tussah, Wild Dupion and Spun	C	7.75	6.75	11.50	7.00	6.10	10.35	801
Silk & Rayon Mixed Goods; Silk & Rayon Mixed Piece Goods	W/M	71.50		93.25	64.35		83.95	805
Silk Staple Fibre Mixed Goods; Silk Staple Fibre Mixed Piece Goods	W/M	71.50		93.25	64.35		83.95	807

Commodity	Rate Basis	Conference			Isbrandtsen			Item No.
		Pac.	O.C.P.	Atl.	Pac.	O.C.P.	Atl.	
Silk, Thrown (Crepe Yarn)	C.	$12.75		$16.75	$11.50		$15.10	809
Silk, Spun & Wool Mixed Yarn	W/M	90.00		111.25	81.00		100.15	811
Skins & Furs in Cases	W/M	74.50		90.00	67.05		81.00	815
Skins & Furs in Bales	W/M	65.50		80.00	58.95		72.00	816
Hides, Dry in Bales	W/M	42.00		48.50	37.80		43.65	817
Hides, Dry in Cases	W/M	34.00		57.50	30.60		51.75	818
Slippers, Grass, Straw, Towelling, Wool, without Leather or Rubber Soles	W/M	31.00	$27.00	39.75	27.90	$24.30	35.80	819
Slippers, Grass, Straw, Towelling, Wool, with Leather or Rubber Soles	W/M	38.50	34.50	52.50	34.65	31.05	47.25	
Slippers, N. O. S.	W/M	43.75		57.50	39.40		51.75	821
Sporting Goods, N. O. S.	W/M	53.75		69.75	48.40		62.80	845
Stationery and Stationery Supplies	W/M	42.75		55.25	38.50		49.75	860
Steel and/or Iron Bars, Plates, Sheets, N. O. S. (Including Galvanized Iron Sheets)	2240 lbs. or 40 cft.	15.00		23.00	15.00		23.00	863
Table Tennis Balls, Ping Pong Balls, Celluloid	M	36.50			32.85			875
Toys and Games (Children's) N. O. S.	W/M	25.00	21.00	32.50	23.00	19.00	30.00	905

Commodity	Rate Basis	Conference Pac.	Conference O.C.P.	Conference Atl.	Isbrandtsen Pac.	Isbrandtsen O.C.P.	Isbrandtsen Atl.	Item No.
Trays, Wood, Undecorated	W/M	31.00		37.50	29.90		33.75	906
Walnuts, in Shells	W	80.50	71.75	87.75	72.45	64.60	79.00	933
Walnuts, without shells	W/M	44.00	42.00	46.75	39.60	37.80	42.10	935
Wood, Ply (including Wallboard)	W/M	30.00		38.50	27.00		34.65	946
Wood Panels; Wood Veneer	W/M	40.00	34.25	45.25	36.00	30.85	40.75	947
Wood Manufactures:								
Bowls (Plain or varnished), Canes (Walking), Coaster Sets, Chesterfield Canes, Hakone Boxes, Hangers, Lamp Stands, Nut Crackers, Salad Sets, Spoons and Forks, Tie Racks, Tooth Picks, Sticks, Trays, Woodenware, Wooden Ship Models, Zig-Zag Rules, N. O. S. Value not exceeding $125.00 per ton	W/M				$20.95	$19.60	$25.90	950
Value exceeding $125.00 but not exceeding $275.00 per ton	W/M				25.20	24.30	28.25	
Value exceeding $275.00 per ton	W/M	$40.00	$34.25	$45.25	36.00	30.85	40.75	
Woolen Manufactures:								
Gloves, Hosiery, Piece Goods, Woolen Top & Carding Yarn, N. O. S.	W/M	56.25		72.25	50.65		60.30	955
Wool Noils	W/M	44.00	42.00	60.00	41.40	37.80	54.00	957
X'mas Ornaments:								
Cotton and Rayon Santa Claus, Decorated Paper and Tinsel Balls, Snow Balls, Paper Houses, etc. X'mas Glass Ornaments and Figures, Tree Ornaments and Hollow Glass (not incl. X'mas Tree Electric Bulbs). Excludes all Artificial Flowers and Leaves	W/M	25.00	21.00	32.50	23.00	19.00	30.00	958

CARRYINGS BY TRAMP VESSELS IN THE TRADE[1] FROM JAPAN TO UNITED STATES ATLANTIC AND GULF COAST PORTS

Month[2]	Cargo Carried[3] in Pounds	Cargo Carried in Short Tons
March 1949	57,416,923	28,708.46
September 1949	885	0.44
March 1950	21,968,790	10,984.40
September 1950	26,929,670	13,464.84
March 1951	181,671	90.84
September 1951	902,775	401.39
March 1952	21,477,990	10,739.00
September 1952	26,433,780	13,216.89

FOOTNOTES:

[1] This data was obtained from the United States Department of Commerce, Bureau of Census, unpublished Report SM-303. United States General Imports of Merchandise on Vessels by Type of Vessel Service by Domestic Port of Unlading by Foreign Port of Lading by Schedule T Commodity.

The Conference has no available source of information as to the rates charged for the transportation of all of the cargoes whose weights are stated above. Certain information, however, is available and we append this information as being pertinent upon the question to which this statement is directed:

Name of Tramp	Month	Type of Cargo	Rate	Conference Rate Then in Effect
Pacific Maru	September 1951	Scrap Iron and Steel	$16.00 per long ton (berth terms)	$17.25 per long ton
Nichigyoku Maru	" "	Scrap Iron and Steel	$16.00 per long ton (berth tons)	$17.25 per long ton
Alice Brown	December 1951	Steel Plates	$20.00 per long ton (berth terms)	$23.00 per long ton or measurement ton.
Union Power	January 1952	Cargo Steel Plates and Steel Pipe	$17.00 per long ton F.I.O.	Then in Effect $23.00 per long ton or measurement ton
Mariam	August 1952	Steel Plates	$5.50 per long ton F.I.O.	$23.00 per long ton or measurement ton
Hai Chang	" "	" "	Rate unknown	$23.00 per long ton or measurement ton
Cabanos	" "	" "	Approx. $60,000. lump sum for approx. 9,400 measurement tons	$23.00 per long ton or measurement ton
Kaiyo Maru	" "	Steel	$12.00 per long ton (berth terms)	$23.00 per long ton or measurement ton
Haiyo Maru	October 1952	Steel and Wire Rods	$12.50 per long ton (berth terms)	$23.00 per long ton or measurement ton
			$12.50 per long ton (berth terms)	$32.00 per short ton

[2] The months of March and September were selected at random in order to reflect some of the tramp carryings in the trade during the post-World War II period.

[3] The carryings in the Bureau of Census unpublished Report SM-303 are shown in pounds. When a comparison is made between carryings by tramp vessels shown in this exhibit with the Conference and non-Conference liner carryings shown in Exhibit G, account should be taken of the fact that the liner carryings are shown in units of "revenue tons"

Exhibit A

Conference Agreements and Membership of the Japan-Atlantic and Gulf Freight Conference[1]

Agreement Number	Date of Approval by F. M. B. or Its Predecessors	Initial Members	Admitted Members	Date of Commencement of Membership	Date of Termination of Membership
73	February 16, 1926[2]	Barber Steamship Lines		February 16, 1926	February 16, 1926
		Nippon Yusen Kaisha		" " "	September 3, 1929
		Osaka Shosen Kaisha		" " "	" " "
			American Pioneer Line	" " "	February 1, 1928
129	September 4, 1929	Barber Steamship Lines, Inc.		September 4, 1929	May 12, 1931
		Nippon Yusen Kaisha		" " "	" " "
		Osaka Shosen Kaisha		" " "	" " "
154	May 13, 1931	Barber-Wilhelmsen Line		May 13, 1931	June 24, 1934
		Dollar Steamship Lines, Inc., Ltd.		" " "	" " "
		Nippon Yusen Kaisha		" " "	" " "
		Osaka Shosen Kaisha		" " "	" " "
			Kokusai Kisen Kaisha	August 1, 1931	" " "
			Kawasaki Kisen Kaisha	September 16, 1932	" " "
3103	June 25, 1934	Mitsui Bussan Kaisha, Ltd.		June 25, 1934	December 11, 1941
			Mitsui Steamship Co., Ltd.	June 28, 1951	still in effect
		Kawasaki Kisen Kaisha, Ltd.		June 25, 1934	December 11, 1941
			Kawasaki Kisen Kaisha	June 13, 1952	still in effect
		Kokusai Kisen Kaisha		June 25, 1934	December 11, 1941
			Kokusai Line[3]	July 2, 1951	still in effect
		Nippon Yusen Kaisha		June 25, 1934	December 11, 1941
			Nippon Yusen Kaisha	June 28, 1951	still in effect
		Osaka Shosen Kaisha, Kobe		June 25, 1934	December 11, 1941
			O. S. K.—Shinnihon New York Line[4]	July 19, 1951	August 21, 1952
			Osaka Shosen Kaisha, Ltd.	August 22, 1952	still in effect
			Shinnihon Steamship Co., Ltd.	" " "	" " "
		Barber-Wilhelmsen Line[5]		June 25, 1934	" " "
		American President Lines, Ltd.[6]		" " "	" " "
		A. P. Moller, Maersk Line[7]		September 20, 1937	" " "
			United Ocean Transport Co., Ltd.	June 26, 1934	December 11, 1941
			Yamashita Kisen Kaisha	May 1, 1935	" " "
			" " "	June 13, 1952	still in effect
			Waterman Steamship Corporation	October 10, 1946	" " "
			Prince Line, Ltd.	August 31, 1948	January 10, 1953[8]
			Lancashire Shipping Company, Ltd.	December 13, 1948	November 29, 1952
			Lykes Bros. Steamship Co., Inc.	December 27, 1946	still in effect
			United States Lines Company (American Pioneer Line)	" " "	" " "
			States Marine Corporation and States Marine Corporation of Delaware[9]	October 14, 1947	" " "
			Ivaran Lines-Far East Service[10]	May 1, 1948	" " "
			Salen-Skaugen Line[11]	May 28, 1949	June 15, 1951
			De La Rama Lines[12]	" " "	still in effect
			Daido Kaiun Kaisha	June 25, 1952	" " "

FOOTNOTES:

1 This name came into effect on August 27, 1952, on which date the Federal Maritime Board approved an agreement amending the Conference's basic Agreement No. 3103. At all times prior thereto, the Conference was named "Japan-Atlantic Coast Freight Conference".

2 Date of final approval, the agreement having received conditional approval on December 18, 1925.

3 This is the trade name for the following companies who hold one Conference Joint Service membership: Nissan Kisen Kaisha, Ltd.; Toho Kaiun Kaisha, Ltd.; Iino Kaiun Kaisha, Ltd.; Mitsubishi Kaiun Kaisha, Ltd.; and Kokusai Kaiun Kaisha, Ltd.

4 This is the trade name for the following companies who held one Conference Joint Service membership: Osaka Shosen Kaisha, Ltd.; and Shinnihon Steamship Co., Ltd.

5 This is the trade name for the following companies who hold one Conference Joint Service membership: Wilhelmsens Dampskibsaktieselskab; A/S Den Norske Afrika-og Australielinie; A/S Tonsberg; A/S Tankfart I; A/S Tankfart IV; A/S Tankfart V; A/S Tankfart VI; Skibasktieselskapet Varild; Skibasktieselskapet Marina; Aktieselskabet Glittre; Dampskibsinteressentskabet Garonne; Skibsaktieselskapet Sangstad; Skibsaktieselskapet Solstad; Skibsaktieselskapet Siljestad; Damskibsaktieselskabet International; Skibsabtieselskapet Mandeville; and Skibsabtieselskapet Goodwill. The Conference membership was originally held in the name of Barber-Wilhelmsen Line; however, effective December 27, 1946, the membership name was changed to that of the first seven of the companies listed above as the present day Joint Service parties. The present Joint Service agreement came into effect on May 19, 1950.

6 The membership was originally listed in the name of Dollar Steamship Lines, Inc., Ltd. and effective November 21, 1938, the name was changed to its present form, as here shown.

7 This is the trade name for the following companies who hold one Conference Joint Service membership: Dampskibsselskabet af 1912 Aktieselskab; and Aktieselskabet Dampskibsselskabet Svendborg.

8 Effective date of termination of membership pursuant to notice of resignation given to the Conference.

9 Present name came into effect on April 28, 1948. At all times prior thereto membership held in the name of States Marine Corporation.

10 This is the trade name for the following companies who hold one Conference Joint Service membership: Skibsaktieselskapet Igadi; A/S Besco; Akttieselskapet Ivarans Rederi; and A/S Lise. Prior to March 31, 1949, the Joint Service consisted of the following three parties: Skibsaktieselskapet Igadi; A/S Besco; and Aktieselskapet Ivarans.

11 This is the trade name for the following companies who held one Conference Joint Service membership: Rederi A. B. Pulp; Rederi A. B. Jamaica; Salamis A/S; and D/S A/S Eikland.

12 This is the trade name for the following companies who hold one Conference Joint Service membership: The De La Rama Steamship Company, Inc.; The Ocean Steam Ship Co., Ltd.; The China Mutual Steam Navigation Co., Ltd.; Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V.; and Swedish East Asia Co., Ltd. Prior to March 29, 1950,

Exhibit B

Rates Charged by the Japan-Atlantic and Gulf Freight Conference and Its Predecessors[1] for the Carriage of Ten Representative Commodities[2] in the Trade

Commodity	Feb. 16, 1923 to Effective Date of Tariff No. 6	Tariff No. 6[3]	Tariff No. 8[11] Nov. 1, 1930	[16]Tariff No. 10[18] Sept. 1, 1934	Tariff No. 11[14] May 1, 1935	Addenda to Tariff No. 11	Tariff No. 12[14] May 1, 1937	Tariff No. 13[14] June 16, 1937	[29]Tariff No. 14[14] June 20, 1938	Tariff No. 15[14] Dec. 1, 1939	Tariff No. 16[14] July 1, 1940	Tariff No. 17[14] July 1, 1941
1. Porcelain (Cheap)	10.50 m[4]	10.50 m[7]	10.50 m[7]	C. 8.00 m[16] N. C. 11.00 m	C. 9.00 m N. C. 12.00 m[16]	C. 9.00 m[23] N. C. 12.00 m	C. 10.00 m N. C. 12.00 m	C. 10.00 m N. C. 12.00 m	C. 10.00 m N. C. 12.00 m	C. 12.00 m N. C. 14.50 m	C. 12.50 m[21] N. C. 14.50 m	C. 12.50 m[21] N. C. 14.50 m
2. Celluloid Toys	10.50 m	10.50 m[8]	C. 9.00 m[12] N. C. 14.00 m	C. 9.00 m[17] N. C. 12.00 m	C. 10.00 m[17] N. C. 13.00 m	C. 10.00 m[26] N. C. 13.00 m	C. 12.00 m N. C. 14.00 m	C. 12.00 m[17] N. C. 14.00 m	C. 12.00 m[17] N. C. 14.00 m	C. 14.00 m[17] N. C. 17.00 m	C. 14.50 m[17][22] N. C. 16.50 m	C. 14.50 m[26] N. C. 16.50 m
3. General Cargo (N. O. S.)	16.00 t/m[5]	16.00 t/m	16.00 t/m	C. 18.00 w/m[18] N. C. 23.00 w/m	C. 20.00 w/m N. C. 25.00 w/m	C. 20.00 w/m N. C. 25.00 w/m	C. 20.00 t/m[18] N. C. 25.00 t/m	C. 20.00 t/m N. C. 25.00 t/m	C. 20.00 t/m N. C. 25.00 t/m	C. 25.00 t/m N. C. 30.00 t/m	C. 29.00 t/m N. C. 34.50 t/m	C. 29.00 t/m N. C. 34.50 t/m
4. Canned Goods (Crab Meat and Tuna Fish)		C. 10.50 m N. C. 14.50 m[9]	C. 10.00 m N. C. 14.50 m[13]	C. 9.50 m N. C. 14.50 m[19]	C. 13.50 m N. C. 17.50 m	C. 17.00 m N. C. 17.50 m	C. 16.00 m[27] N. C. 19.00 m	C. 16.00 m[27] N. C. 18.00 m	C. 16.00 m[27] N. C. 18.00 m	C. 18.00 m[26] N. C. 21.50 m	C. 20.50 m[23] N. C. 24.50 m	C. 20.50 m[23] N. C. 24.50 m
5. Raw Silk		6.00 t/cwt	6.00 cwt	C. 4.00 cwt N. C. 6.00 cwt	C. 4.00 cwt N. C. 6.00 cwt	C. 4.00 cwt N. C. 6.00 cwt	C. 4.00 cwt N. C. 6.00 cwt	C. 4.00 cwt N. C. 6.00 cwt	C. 4.00 cwt N. C. 6.00 cwt	C. 6.00 cwt N. C. 7.00 cwt	C. 6.00 cwt N. C. 9.00 cwt	C. 6.50 cwt N. C. 9.50 cwt
6. Metal Ware		16.00 t/m[10]	16.00 t/m[10]	C. 10.00 m[20] N. C. 13.00 m	C. 12.00 m[20] N. C. 16.00 m	C. 12.00 m N. C. 16.00 m	C. 14.00 m[20] N. C. 16.00 m	C. 14.00 m[20] N. C. 16.00 m	C. 14.00 m[20] N. C. 16.00 m	C. 16.00 m[20] N. C. 19.00 m	C. 18.50 m[20][24] N. C. 22.00 m	C. 18.50 m[26] N. C. 22.00 m
7. Bamboo Ware		12.00 m	12.00 m	C. 9.00 m[22] N. C. 12.00 m	C. 8.00 m[25] N. C. 11.00 m	C. 11.00 m N. C. 13.00 m	C. 11.00 m N. C. 13.00 m	C. 11.00 m N. C. 13.00 m	C. 11.00 m N. C. 13.00 m	C. 13.00 m N. C. 15.50 m	C. 13.50 m N. C. 15.50 m	C. 13.50 m N. C. 15.50 m
8. Cold Storage Cargo (Frozen Fish)		16.00 t/m[10]	16.00 t/m[10]	C. 30.00 m[21] N. C. 40.00 m	C. 33.00 m N. C. 42.00 m	C. 33.00 m N. C. 42.00 m	C. 40.00 m[21] N. C. 44.00 m	C. 40.00 m[21] N. C. 44.00 m	C. 40.00 t[29] N. C. 44.00 t	C. 44.00 t N. C. 53.00 t	C. 50.50 t N. C. 61.00 t	C. 50.50 t N. C. 61.00 t
9. Machinery		22.00 t/m or 2½ ad val.	16.00 t/m[10]	C. 18.00 w/m[15] N. C. 23.00 w/m	C. 20.00 w/m[15] N. C. 25.00 w/m	C. 15.00 w/m[28] N. C. 20.00 w/m	C. 17.00 t/m N. C. 19.00 t/m	C. 17.00 t/m N. C. 19.00 t/m	C. 17.00 t/m N. C. 19.00 t/m	C. 19.00 t/m N. C. 23.00 t/m	C. 22.00 t/m N. C. 26.50 t/m	C. 22.00 t/m N. C. 26.50 t/m
10. Cotton Goods		16.00 m	16.00 m	C. 16.00 m N. C. 21.00 m	C. 18.00 m N. C. 24.00 m	C. 18.00 m N. C. 24.00 m	C. 20.00 m N. C. 24.00 m	C. 20.00 m N. C. 24.00 m	C. 20.00 m N. C. 24.00 m	C. 24.00 m N. C. 29.00 m	C. 27.00 m N. C. 30.00 m	C. 27.00 m N. C. 30.00 m

35

Exhibit B

nference and Its Predecessors[1] for the Carriage of Ten Representative Commodities[2] in the Trade from Japan to United States Atlantic and Gulf Coast Ports

Commodity	[16]Tariff No. 13[14] June 16, 1937	[29]Tariff No. 14[14] June 20, 1938	Tariff No. 15[14] Dec. 1, 1939	Tariff No. 16[14] July 1, 1940	Tariff No. 17[14] July 1, 1941	Tariff No. 18[27] May 1, 1948	Addenda to Tariff No. 18	Tariff No. 19 July 10, 1948	Addenda to Tariff No. 19	Addenda to Tariff No. 19	Tariff No. 20 February 15, 1951	Addenda to Tariff No. 20	Addenda to Tariff No. 20	Rates in Effect on November 14, 1952
1. Porcelain (Cheap)	C. 10.00 m N. C. 12.00 m	C. 10.00 m N. C. 12.00 m	C. 12.00 m N. C. 14.50 m	C. 12.50 m[21] N. C. 14.50 m	C. 12.50 m[21] N. C. 14.50 m	39.25 m	30.00 m[39]	30.00 m[41]	30.00 m[42]	25.00 m[46]	28.75 m[47]	28.75 t/m[46]	28.75 t/m	28.75 t/m
2. Celluloid Toys	C. 12.00 m[17] N. C. 14.00 m	C. 12.00 m[17] N. C. 14.00 m	C. 14.00 m[17] N. C. 17.00 m	C. 14.50 m[17][22] N. C. 16.50 m	C. 14.50 m[26] N. C. 16.50 m	22.25 m	22.25 m	25.50 m	25.50 m	25.50 m	29.25 m	31.50 t/m[48]	34.00 t/m[52]	32.50 t/m[54]
3. General Cargo (N. O. S.)	C. 20.00 t/m N. C. 25.00 t/m	C. 20.00 t/m N. C. 25.00 t/m	C. 25.00 t/m N. C. 30.00 t/m	C. 29.00 t/m N. C. 34.50 t/m	C. 29.00 t/m N. C. 34.50 t/m	49.00 t/m	49.00 t/m	56.25 t/m	45.00 t/m[43]	45.00 t/m	51.75 t/m	56.25 t/m[48]	56.25 t/m	56.25 t/m
4. Canned Goods (Crab Meat and Tuna Fish)	C. 16.00 m[27] N. C. 18.00 m	C. 16.00 m[27] N. C. 18.00 m	C. 18.00 m[26] N. C. 21.50 m	C. 20.50 m[23] N. C. 24.50 m	C. 20.50 m[23] N. C. 24.50 m	34.50 m[38]	35.50 m[40]	40.75 m	40.75 m	40.75 m	46.75 m	46.75 t/m[50]	50.50 t/m[49]	50.50 t/m
5. Raw Silk	C. 4.00 cwt N. C. 6.00 cwt	C. 4.00 cwt N. C. 6.00 cwt	C. 6.00 cwt N. C. 7.00 cwt	C. 6.00 cwt N. C. 9.00 cwt	C. 6.50 cwt N. C. 9.50 cwt	8.00 cwt	8.00 cwt	9.25 cwt	open[44]	9.25 cwt[46]	10.75 cwt	11.50 cwt[48]	11.50 cwt[52]	11.50 cwt[53]
6. Metal Ware	C. 14.00 m[20] N. C. 16.00 m	C. 14.00 m[20] N. C. 16.00 m	C. 16.00 m[20] N. C. 19.00 m	C. 18.50 m[20][24] N. C. 22.00 m	C. 18.50 m[26] N. C. 22.00 m	31.25 m	31.25 m	36.00 m	36.00 m	36.00 m	41.50 m	41.50 t/m[50]	45.00 t/m[49]	45.00 t/m
7. Bamboo Ware	C. 11.00 m N. C. 13.00 m	C. 11.00 m N. C. 13.00 m	C. 13.00 m N. C. 15.50 m	C. 13.50 m N. C. 15.50 m	C. 13.50 m N. C. 15.50 m	23.75 m	23.75 m	27.25 m	27.25 m	27.25 m	31.25 m	31.25 t/m[50]	33.50 t/m[49]	32.25 t/m[51]
8. Cold Storage Cargo (Frozen Fish)	C. 40.00 m[21] N. C. 44.00 m	C. 40.00 t[29] N. C. 44.00 t	C. 44.00 t N. C. 53.00 t	C. 50.50 t N. C. 61.00 t	C. 50.50 t N. C. 61.00 t	85.25 t	85.25 t	98.00 t	98.00 t	98.00 t	112.75 t	100.00 t[51]	100.00 t[51]	100.00 t[51]
9. Machinery	C. 17.00 t/m N. C. 19.00 t/m	C. 17.00 t/m N. C. 19.00 t/m	C. 19.00 t/m N. C. 23.00 t/m	C. 22.00 t/m N. C. 26.50 t/m	C. 22.00 t/m N. C. 26.50 t/m	30.00 t/m	30.00 t/m	34.50 t/m	34.50 t/m	34.50 t/m	39.75 t/m	42.75 t/m[49]	42.75 t/m	42.75 t/m
10. Cotton Goods	C. 20.00 m N. C. 24.00 m	C. 20.00 m N. C. 24.00 m	C. 24.00 m N. C. 29.00 m	C. 27.00 m N. C. 30.00 m	C. 27.00 m N. C. 30.00 m	33.75 m	33.75 m	38.75 m	38.75 m	38.75 m	44.50 m	47.50 t/m[50]	47.50 t/m	47.50 t/m

FOOTNOTES:

1 The Japan-Atlantic and Gulf Freight Conference was originally known as the Japan-Atlantic Coast Freight Conference (see fn. 3). This name continued in effect from February 16, 1926, until August 27, 1952, on which date the Federal Maritime Board approved an agreement amending the Conference's basic Agreement No. 3103. This amendatory agreement changed the name of the Conference to its present form.

2 The designated ten commodities were selected as those carried with the greatest frequency and in the greatest volume over the years studied, especially the post-World War II years.

3 On February 16, 1926, the Japan-Atlantic Coast Freight Conference came into formal existence when the United States Shipping Board, predecessor in authority of the present Federal Maritime Board, gave formal approval to the Conference's basic Agreement No. 73. The rates for the three commodities given in this column were obtained from a memorandum prepared in July, 1952, by the Tokyo Office of Nippon Yusen Kaisha. The memorandum, written in Japanese, bears a title which has been translated as "Memorandum on Two Conferences Over the Japan-U. S. Shipping Services". It has as one of its purposes the outlining of the history of the Japan-Atlantic Coast Freight Conference and is based on old documents which that carrier has in its possession. These three rates continued in effect until the effective date of Tariff No. 6 (see fn. 6) where they were republished at the same level. Rates for the other seven commodities for this period could not be obtained.

4 m = per measurement ton of 40 cubic feet.

5 t/m = per short ton of 2,000 pounds or per 40 cft., whichever yields the greater revenue.

6 This tariff is the earliest tariff of which a complete record was found. It is a handwritten tariff which bears the caption of the Japan-Atlantic Coast Freight Conference and states that it "cancels all previous issues". It further states that it was issued by Nippon Yusen Kaisha and Osaka Shosen Kaisha. Unfortunately it bears no date; however, since it gives as the duration of the contract/non-contract rates listed for Lily Bulbs to Atlantic Coast ports as December 31, 1928, it can be definitely stated that the tariff became effective on a date prior thereto. Furthermore, it is known that on February 1, 1928, American Pioneer Line withdrew from the Conference leaving solely N. Y. K. and O. S. K. as members (see Exhibit A). Tariff No. 6, therefore, probably came into effect at some date between February 1, 1928, and December 31, 1928.

7 This is the rate shown for "cheap porcelain", i. e., that having a value of $150.00 or less per measurement ton. Porcelain of greater value carried a rate of $15.00 m.

8 This is the rate shown for "cheap curios and toys", i. e., those having a value of $150.00 or less per 40 cft. Toys of greater value presumably took the General Cargo (N. O. S.) rate.

9 Only the canned crab contract and non-contract rates are shown in the tariff. The duration given is May 31, 1929. Canned crab in the body of the tariff is shown having a rate of $10.00 m. Canned tuna presumably took the General Cargo (N. O. S.) rate.

10 No rate specifically designated. Hence, presumably, it took the General Cargo (N. O. S.) rate.

11 The history of rates between the effective dates of Tariff No. 6 and of Tariff No. 8 is unknown except that the N. Y. K. memorandum (see fn. 3) shows that there was no change in rate for the first three commodities during these years.

12 Celluloid toys were separated and made a separate tariff item apart from other types of toys and curios. The contract and non-contract rates were given as in effect "until further notice". Addendum No. 1 to the tariff, effective April 1, 1931, extended these rates to September 30, 1931.

13 duration to May 31, 1931. Canned crab, in the body of the tariff, is shown as having a rate of $12.50 m.

14 A Joint Tariff of the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic Coast Freight Conference.

15 On April 1, 1931, Addendum No. 1 to Tariff No. 8 took effect. It listed a rate for "Cold Storage Cargo (
Frozen Fish)" of $30.00 t/m. However, since today frozen swordfish in bulk is the item of reefer cargo which
greatest volume, there is here shown only tariff items which embrace this commodity and, therefore, no menti
change is made in the tables. The addendum lists no change in the Ten Representative Commodities, hence
shown in Tariff No. 8 continued in effect until at least April 1, 1931. The history of rates thereafter, until th
date of Tariff No. 10, is unknown.

16 of a value not in excess of $150.00 per 40 cft. Porcelain of greater value presumably took the General Cargo
rate.

17 of a value not in excess of $100.00 per 40 cft. Celluloid toys of greater value presumably took the General Cargo
rate.

18 W/m = per long ton of 2240 pounds or per 40 cft., whichever yields the greater revenue. Rate became effective
1, 1934; the Tariff No. 10 rate in existence prior thereto is not shown.

19 for tuna (maguro). The rate for canned crab was C. $9.25 m, N. C. $14.50 m.

20 of a value not in excess of $175.00 per 40 cft. Metal ware of greater value presumably took the General Cargo
rate.

21 This is the rate given for Cold Storage Fish, other than maguro. Since frozen swordfish in bulk is today'
reefer cargo, that category of Cold Storage Cargo, which embraces this commodity, will be here studied.

22 This is the rate given "Bamboo Poles and Sticks". Bamboo blinds took a rate of C. $12.00 m, N. C. $16.00
bamboo ware presumably took the General Cargo (N. O. S.) rate.

23 Effective July 1, 1936, a rate of C. $10.00 m, N. C. $13.00 m to Gulf ports was established.

24 The old rates continued in effect, the addenda making no mention of any change. Hereinafter, such situat
shown by a notation of the old rates in the addenda columns.

25 Bamboo ware was specifically listed as a tariff item in Addendum No. 2, effective December 1, 1935.

26 Machinery was listed as a specific tariff item by Addendum No. 1, effective August 26, 1935.

27 for canned maguro (tuna). The rate for canned crab was $1.00 higher for both contract and non-contract ca

28 A "Notice to Shippers" dated September 14, 1939, stated that because of current conditions caused by war
the Conference was cancelling all contracts forthwith and that the same rates as the non-contract rates of Ta
would be quoted as new minimum rates on all cargo except raw silk, for ships sailing from any Japanese p
after October 1, 1939. A notice to silk shippers dated September 26, 1939, further stated that, for the same
contracts were being cancelled forthwith and that the same rates as the non-contract rates would be quot
minimum rates on raw silk for ships sailing from any Japanese port on and after November 27, 1939.

29 for fish, other than maguro, in bulk.

30 for canned maguro (tuna). The rate for canned crab was C. $19.00 m, N. C. $23.00 m.

31 of a value not in excess of $150.00 per 40 cft.; for porcelain in excess of this value, contract and non-contract
each $1.00 higher per 40 cft.

32 Effective Oct. 2, 1940, the rate for toys of a value in excess of $100.00 per 40 cft. was C. $15.50 m, N. C. $17.

33 for canned maguro (tuna). The rate for canned crab was C. $21.00 m, N. C. $24.00 m.

34 Effective Oct. 2, 1940, the rate for metal ware of a value in excess of $175.00 per 40 cft. was C. $20.50 m, N.

n April 1, 1931, Addendum No. 1 to Tariff No. 8 took effect. It listed a rate for "Cold Storage Cargo (other than en Fish)" of $30.00 t/m. However, since today frozen swordfish in bulk is the item of reefer cargo which moves in test volume, there is here shown only tariff items which embrace this commodity and, therefore, no mention of this ge is made in the tables. The addendum lists no change in the Ten Representative Commodities, hence the rates n in Tariff No. 8 continued in effect until at least April 1, 1931. The history of rates thereafter, until the effective of Tariff No. 10, is unknown.

value not in excess of $150.00 per 40 cft. Porcelain of greater value presumably took the General Cargo (N. O. S.)

value not in excess of $100.00 per 40 cft. Celluloid toys of greater value presumably took the General Cargo (N. O. S.)

= per long ton of 2240 pounds or per 40 cft., whichever yields the greater revenue. Rate became effective December 34; the Tariff No. 10 rate in existence prior thereto is not shown.

una (maguro). The rate for canned crab was C. $9.25 m, N. C. $14.50 m.

value not in excess of $175.00 per 40 cft. Metal ware of greater value presumably took the General Cargo (N. O. S.)

This is the rate given for Cold Storage Fish, other than maguro. Since frozen swordfish in bulk is today's principal r cargo, that category of Cold Storage Cargo, which embraces this commodity, will be here studied.

This is the rate given "Bamboo Poles and Sticks". Bamboo blinds took a rate of C. $12.00 m, N. C. $16.00 m. Other boo ware presumably took the General Cargo (N. O. S.) rate.

ffective July 1, 1936, a rate of C. $10.00 m, N. C. $13.00 m to Gulf ports was established.

The old rates continued in effect, the addenda making no mention of any change. Hereinafter, such situation will be n by a notation of the old rates in the addenda columns.

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anned maguro (tuna). The rate for canned crab was $1.00 higher for both contract and non-contract carriage.

"Notice to Shippers" dated September 14, 1939, stated that because of current conditions caused by war in Europe, Conference was cancelling all contracts forthwith and that the same rates as the non-contract rates of Tariff No. 14 d be quoted as new minimum rates on all cargo except raw silk, for ships sailing from any Japanese port, on and October 1, 1939. A notice to silk shippers dated September 26, 1939, further stated that, for the same reason, all acts were being cancelled forthwith and that the same rates as the non-contract rates would be quoted as new mum rates on raw silk for ships sailing from any Japanese port on and after November 27, 1939.

ish, other than maguro, in bulk.

anned maguro (tuna). The rate for canned crab was C. $19.00 m, N. C. $23.00 m.

value not in excess of $150.00 per 40 cft.; for porcelain in excess of this value, contract and non-contract rates were $1.00 higher per 40 cft.

ffective Oct. 2, 1940, the rate for toys of a value in excess of $100.00 per 40 cft. was C. $15.50 m, N. C. $17.50 m.

anned maguro (tuna). The rate for canned crab was C. $21.00 m, N. C. $24.00 m.

ffective Oct. 2, 1940, the rate for metal ware of a value in excess of $175.00 per 40 cft. was C. $20.50 m, N. C. $24.50 m.

35 of a value not in excess of $100.00 per 40 cft.; for celluloid toys in excess of this value, the rate continued as before (see fn. 32), i. e., C. $15.50 m, N. C. $17.50 m.

36 of a value not in excess of $175.00 per 40 cft.; for metal ware in excess of this value, the rate continued as before (see fn. 34), i. e., C. $20.50 m, N. C. $24.50 m.

37 This is the Conference's first post-World War II tariff. Conference sailings having been suspended on or about December 8, 1941, due to the outbreak of war between Japan and the United States. This tariff shows both contract and non-contract rates. However, the contract/non-contract rate system was suspended and the contract rates, which are the only rates shown for all post-World War II tariffs, were made applicable to all shipments; the non-contract rates became entirely academic.

38 Canned crab was $1.00 per 40 cft. higher.

39 Effective May 26, 1948, the prior rate continued in effect for porcelain of a value in excess of $150.00 per 40 cft. The rate here shown is for porcelain of lesser value.

40 Effective February 19, 1947, canned maguro (tuna) was absorbed into the same tariff item number as canned crab and one rate became applicable to both.

41 of a value not in excess of $150.00 per 40 cft.; for porcelain in excess of this value the rate of $39.25 per 40 cft. continued.

42 of a value not in excess of $275.00 per 40 cft.; for porcelain in excess of this value the rate of $39.25 per 40 cft. continued. This change became effective March 31, 1949.

43 Effective June 28, 1950.

44 Effective March 1, 1950, the rate was declared open and it remained thus until September 30, 1950, when the open rate was cancelled.

45 of a value not in excess of $100.00 per 40 cft.; for porcelain in excess of this value, but not in excess of $275.00 per 40 cft., the rate of $30.00 per 40 cft. was established; for porcelain in excess of these values, the rate of $39.25 per 40 cft. was established. These changes became effective August 30, 1950.

46 Effective October 1, 1950 (see fn. 44).

47 of a value not in excess of $100.00 per 40 cft.; for porcelain in excess of this value, but not in excess of $275.00 per 40 cft., the rate of $34.50 per 40 cft. was established; for porcelain in excess of these values, the rate of $45.25 per 40 cft. was established.

48 Effective April 25, 1951; for porcelain of a value not in excess of $100.00 per 40 cft. The rate basis for the other two categories of porcelain, based on value (see fn. 47) was likewise changed to t/m.

49 Effective January 1, 1952.

50 Effective April 25, 1951.

51 Effective June 28, 1951, a new item of "Swordfish" was established under Cold Storage Cargo at this rate. The old rate continued for all other Fish, in Bulk, other than maguro. Effective June 28, 1951, the new item was designated "Swordfish in Bulk or in Cloth Bags." This designation and the rates given for it and for other Fish in Bulk, other than maguro, continues to the present.

52 Effective February 27, 1952. Fifth revised page No. 41 of this tariff showed a rate of $36.00 t/m scheduled to come into effect on this date but before this could take place sixth revised page No. 41 was issued showing this rate as coming into effect on this date. Hence, the rate of $36.00 t/m was a mere paper rate and is not reflected in the above tables.

53 Effective May 30, 1952, a rate of $13.00 cwt. was established from Korea.

54 Effective April 30, 1952.

Exhibit F

ISBRANDTSEN LINE

NEW YORK

INDEPENDENT DEPENDABLE

REGULAR SAILINGS FROM JAPAN

No. 38 Tokyo, November 6, 1952.

WE ARE HAPPY TO ANNOUNCE TO ALL OUR SHIPPERS THAT OUR NEW RATE EFFECTIVE S/S "FLYING CLOUD" WILL BE 10% LESS THAN THE CONFERENCE CONTRACT RATE

TO NEW YORK, NORFOLK, BALTIMORE & PHILADELPHIA VIA SAN FRANCISCO & LOS ANGELES

Vessels	Kobe	Nagoya	Shimizu	Yokohama
S/S FLYING CLOUD	Arrived	Nov. 11		Arr. Nov. 14
	S'ls. Nov. 10	Nov. 12	Nov. 13	S'ls. Nov. 16
S/S FLYING TRADER	Arr. Nov. 21	Nov. 26		Arr. Nov. 29
	S'ls. Nov. 25	Nov. 27	Nov. 28	S'ls. Nov. 30
S/S FLYING ENTERPRISE II	Arr. Dec. 3	Dec. 8		Arr. Dec. 11
	S'ls. Dec. 7	Dec. 9	Dec. 10	S'ls. Dec. 15
S/S FLYING CLIPPER	Arr. Dec. 24	Dec. 27		Arr. Dec. 30
	S'ls. Dec. 26	Dec. 28	Dec. 29	S'ls. Dec. 31
S/S FLYING EAGLE	Arr. Jan. 5 '52	Jan. 11		Arr. Jan. 14
	S'ls. Jan. 10	Jan. 12	Jan. 13	S'ls. Jan. 16

Excellent passenger accommodations are available with private lavatory and shower. To San Francisco $350, to New York $450.

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OSAKA:
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NAGOYA: (Aichi Kaiun)
4,4—chome, Minato-honmachi, Minato-ku. Tel. 6-1601 ~ 5
SHIMIZU: (Shimizu Soko)
2, 1-chome, Hinode-cho Tel. Shimizu 1144 1901

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580

MATTHEW BENDER & COMPANY MB 57

MICROCARD

TRADE MARK ®

Exhibit G

COMPARISON OF CONFERENCE AND NON-CONFERENCE[1] LINER CARRYINGS IN THE TRADE FROM JAPAN TO UNITED STATES ATLANTIC AND GULF COAST PORTS.

Col. (1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)	Col. (8)
Month	Non-Conference[2] Liner Carryings in Revenue Tons	Total Conference Carryings in Revenue Tons	Total Liner Carryings in Revenue Tons [Col. (2) + Col. (3)]	% Non-Conference Carryings [Col. (2) ÷ Col. (4) × 100]	% Conference Carryings [Col. (3) ÷ Col. (4) × 100]	No. of Conference Members with Sailings during Month	Average % of Carryings per Conference Member with Sailings during Month [Col. (6) ÷ Col. (7) × 100]
June 1951[3]	5,214	15,221	20,435	25.5	74.5	7	10.6
July 1951	1,832	20,962	22,794	8.0	92.0	10	9.2
Aug. 1951	6,128	13,341	19,469	31.5	68.5	12	5.7
Sept. 1951	4,564	18,444	23,008	19.8	80.2	11	7.3
Oct. 1951	7,133	14,531	21,664	32.9	67.1	11	6.1
Nov. 1951	12,596	19,562	32,158	39.2	60.8	12	5.1
Dec. 1951	12,005	24,955	36,960	32.5	67.5	11	6.1
Jan. 1952	10,189	16,044	26,233	38.8	61.2	9	6.8
Feb. 1952	10,778	19,419	30,197	35.7	64.3	11	5.8
March 1952	5,482	22,047	27,529	19.9	80.1	10	8.0
April 1952	10,298	18,085	28,383	36.3	63.7	10	6.4
May 1952	9,210	17,738	26,948	34.2	65.8	10	6.6
June 1952	5,952	20,875	26,827	22.2	77.8	11	7.1
July 1952	8,633	22,905	31,538	27.4	72.6	11	6.6
Aug. 1952	14,175	22,505	36,680	38.6	61.4	12	5.1
Sept. 1952	15,503	29,984	45,487	34.1	65.9	12	5.5
Totals June 1951 through Sept. 1952	139,692[4]	316,618[5]	456,310	30.6[6]	69.4[7]		

FOOTNOTES:

1 The only non-Conference carrier engaged in genuine common carrier operations in the Conference Trade during the period above set forth is Isbrandtsen. China Merchants Steam Navigation Co. berthed one vessel during the month of August, 1952, but, so far as the Conference Trade is concerned, this vessel carried only steel sheets to New Orleans; hence, this steamer has been eliminated from the records of liner operations and has been included in tramp operations. Also in the last half of 1950, Pacific Marine Corporation berthed two Liberty vessels, i. e., the S. S. ANNASTA and the S. S. AGATHA at rates 15% under the Conference rates. This company discontinued service as the Liberty ships were unsuitable to the trade and the chartered tonnage appeared not to be adapted to regular service. No further facts with respect to the carryings of the S. S. ANNASTA or the S. S. AGATHA are available.

2 Statistics giving the total of Isbrandtsen's carryings to all of the United States, only, were available. However, experience in this trade, gained by the Conference members, as well as information obtained from Japan, is to the effect that, on a conservative basis, at least 85% of the total United States Isbrandtsen-carried cargo was destined for Atlantic and Gulf Coast ports. Hence the Isbrandtsen carryings shown in this Column were computed on the basis of 85% of Isbrandtsen's total United States carryings from Japan.

3 Complete information concerning the carryings of Isbrandtsen for the period prior to June 1951 was not available. However, it was possible to obtain Isbrandtsen's carryings for the months of January 1949, 1950 and 1951 as well as for the months of July 1949 and 1950. These carryings, when compared with Conference carryings are as follows:

Col. (1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)	Col. (8)
Month	Non-Conference Liner Carryings in Revenue Tons	Total Conference Carryings in Revenue Tons	Total Liner Carryings in Revenue Tons [Col. (2) + Col. (3)]	% Non-Conference Carryings [Col. (2) ÷ Col. (4) × 100]	% Conference Carryings [Col. (3) ÷ Col. (4) × 100]	No. of Conference Members with Sailings during Month	Average % of Carryings per Conference Member with Sailings during Month [Col. (6) ÷ Col. (7) × 100]
Jan. 1949	None	7,817	7,817	0	100	5	20.0
July 1949	None	8,445	8,445	0	100	6	16.7
Jan. 1950	9,435	10,429	19,864	47.5	52.5	5	10.5
July 1950	5,364	24,920	30,284	17.7	82.3	8	10.3
Jan. 1951	11,102	15,541	26,643	41.7	58.3	7	8.3

Although Isbrandtsen carried no cargo during the months of January 1949 and July 1949, it did carry cargo during the months of February, March, April, May and June of the year 1949; the size of these carryings, however, is not known.

4 During this period Isbrandtsen had 28 sailings as follows:

Sir John Franklin	(June-July 1951)
Flying Arrow	(August 1951)
Flying Independent	(August-September 1951)
Cape Race	(September 1951)
Flying Clipper	(October 1951)
Flying Trader	(October-November 1951)
Sir John Franklin	(November 1951)
Remsen Heights	(November-December 1951)
Brooklyn Heights	(December 1951)
Flying Arrow	(December 1951)
Flying Independent	(January 1952)
Flying Foam	(January-February 1952)
Flying Clipper	(February 1952)
Flying Trader	(February-March 1952)
Sir John Franklin	(March-April 1952)
Remsen Heights	(April 1952)
Brooklyn Heights	(April-May 1952)
Flying Spray	(May 1952)
Flying Independent	(May-June 1952)
Flying Foam	(June 1952)
Flying Arrow	(July 1952)
Flying Trader	(July 1952)
Flying Clipper	(August 1952)
Sir John Franklin	(August 1952)
Flying Eagle	(August 1952)
Brooklyn Heights	(September 1952)
Remsen Heights	(September 1952)
Flying Spray	(September 1952).

Hence, the average carryings per non-Conference sailing was 4089.8 tons (compare with fn. 5).

5 During this period the Conference members had a total of 262 sailings (see Exhibit D). Hence, the average carrying per Conference sailing was 1,208.5 tons (compare with fn. 4).

6 $\frac{130,602}{456,310} \times 100 = 30.6\%$.

Number of Tariff Items	Difference (−)* Between Proposed Non-Contract Rate and Pre-November 15 Tariff Rate	Number of Items as to Which Proposed Non-Contract Rate Equals Pre-November 15 Tariff Rate	Number of Tariff Items	Difference (Between Prop Non Contra Rate and Pre-Novembe Tariff Rat
1	−$10.75	13	41	+$ .25
1	− 10.50		65	+ .50
1	− 10.25		20	+ .75
1	− 9.50		17	+ 1.00
3	− 7.50		7	+ 1.25
1	− 7.25		4	+ 1.50
2	− 7.00		2	+ 1.75
2	− 6.50		1	+ 2.25
1	− 6.00		1	+ 2.50
2	− 5.75		2	+ 2.75
3	− 5.50		1	+ 3.00
4	− 5.25		2	+ 3.50
1	− 5.00		1	+ 3.75
2	− 4.75		2	+ 4.75
1	− 4.50		1	+ 5.00
1	− 4.25		1	+ 5.25
2	− 4.00		2	+ 5.50
5	− 3.75		1	+ 5.75
3	− 3.50		1	+ 6.00
3	− 3.25		1	+ 6.50
3	− 3.00			
3	− 2.75			
9	− 2.50			
10	− 2.25			
5	− 2.00			
9	− 1.75			
10	− 1.50			
8	− 1.25			
4	− 1.00			
11	− .75			
7	− .50			
11	− .25			

* A minus (−) before an amount indicates that the new non-contract rate is less by amount than the old tariff rate. A plus (+) before an amount indicates that th non-contract rate exceeds the old tariff rate by that amount.

EXHIBIT J

JAPAN-ATLANTIC AND GULF FREIGHT CONFERENCE AGREEMENT FOR THE CARRIAGE OF FREIGHT

Contract No._____

THIS AGREEMENT MADE BETWEEN_____, hereinafter called the Shipper, and the Members of the Japan-Atlantic and Gulf Freight Conference, hereinafter called the Carriers, provides as follows:

1) The Shipper agrees to forward or cause to be forwarded by vessels of the Carriers all shipments made directly or indirectly by him, his agents, subsidiaries, associated or parent companies, from Japan, Korea and Okinawa to United States Gulf Ports and Atlantic Coast Ports of North America, whether such shipments are made C.I.F., C.&F., F.O.B., ex-godown or by any other terms.

2) The Carriers agree to carry the Shipper's cargoes so far as their regular services are available, at the Contract rates set out in the Tariff of the Japan-Atlantic and Gulf Freight Conference. Rates of freight are subject to reasonable increase. The Carriers undertake to give the Shipper notice of increase by letter, by general posting of revisions of tariff rates in the office of the Secretary, Japan-Atlantic and Gulf Freight Conference, or by press announcement thereof. Increases shall not become effective until the expiration of the calendar month during which notice is given and of the two calendar months next following.

For the purpose of giving the Shipper notices of all changes in rates, the Shipper shall furnish the Conference Secretary a list of commodities in which the Shipper is interested, and the Shipper shall thereafter receive notice of change of rates applicable to said commodities. Should the Carriers during the period of this Agreement reduce rates on any commodity on which Contract rates are applicable, the Shipper shall be given the full benefit of such reduced rates during the period same remain in effect.

3) All Conference rules, regulations, terms and conditions in the Tariff of the Japan-Atlantic and Gulf Freight

Conference and the respective addenda current at the time of shipment of goods are part of this Agreement.

4) The Carriers undertake to maintain a shipping service which shall be adequate to meet the reasonable requirements of the commerce of Japan, Korea and Okinawa moving in the trade specified in Paragraph 1 above. The Shipper may select any vessel in the regular services of the Carriers subject only to mutual agreement as to quantity per vessel and to ability of vessel to carry.

If the Carriers do not furnish space after the Shipper applies therefor, the Shipper may secure space elsewhere without prejudice, provided he first notifies the Secretary, Japan-Atlantic and Gulf Freight Conference, Tokyo, Japan, of his requirement for space and provided the Secretary does not notify him within three (3) days thereafter, excluding Sundays and holidays, of the availability of space on Carriers' vessels within the ensuing fifteen (15) day period.

5) If the Shipper shall make or cause to be made, any shipment in violation of this Agreement, the Shipper shall pay as liquidated damages to the Carriers fifty percentum (50%) of the amount of freight which the Shipper would have paid had such shipment been made in a vessel of the Carriers at the Contract rate currently in effect. Upon failure of the Shipper to pay liquidated damages within thirty (30) days after receipt of demand from the Carriers, the Carriers shall terminate the Shipper's right to the Contract rates until the Shipper pays to the Carriers the amount due. If the Shipper violates this Agreement more than once in any period of twelve (12) months, the Carriers shall cancel this Agreement by serving written notice upon the Shipper. If the Agreement is thus cancelled, the Carriers shall refuse to enter into a new Agreement with the Shipper until any unpaid liquidated damages due to the Carriers have been paid in full.

The Shipper shall, upon request, furnish to the Carriers full and complete information with respect to any shipment

made, or caused to be made, by the Shipper in the trade covered by this Agreement.

6) Notwithstanding any other provision of this Agreement, if the Shipper submits written proof satisfactory to the Secretary of the Japan-Atlantic and Gulf Freight Conference that a foreign buyer on an F.O.B. or F.A.S. shipment from Japan has designated a non-Conference vessel for a shipment, then such shipment will be exempt from this Agreement. The Carriers shall thereafter deny Contract rates on subsequent cargo *consigned to such foreign buyer* on an F.O.B. or F.A.S. basis, in vessels of the Carriers to destinations specified under Paragraph 1 above unless such foreign buyer shall first subscribe to a contract with the Carriers.

7) Shipments under this Agreement are subject to all the terms and conditions of the respective Carrier's engagement note, permit, dock receipt and bill of lading in use by the Carrier when shipments are tendered.

8) The Carriers may cancel this Agreement or suspend service in the event of hostilities or threat thereof which reasonably may be anticipated to affect the trade covered by this Agreement.

9) This Agreement may be terminated by either Party by notice in writing and such termination shall become effective three (3) calendar months after receipt by the other Party of such written notice.

10) Any controversy, claim or dispute arising out of or relating to this Agreement which cannot be settled amicably shall be settled by arbitration in Tokyo, Japan. Each of the interested parties shall within seven (7) days of the filing of a submission or demand for arbitration nominate one arbitrator each who, failing agreement, shall appoint a third arbitrator and the award of the majority shall be binding upon the parties and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

11) Each Member of the Conference is responsible for its own part only in this Agreement. Both the Shipper and the Carriers promise and declare they will faithfully perform and carry out all the obligations and promises on their part to be performed in order to obtain the maximum mutual benefits hereunder.

The Carriers which are Members of the Japan-Atlantic and Gulf Freight Conference at the time of execution of this Agreement are listed below.

Should additional Carriers become Members of the Japan-Atlantic and Gulf Freight Conference after the date of this Agreement, the terms of this Agreement shall apply fully to such Carrier from the date of Membership; should any Carrier cease to be a Member of such Conference, all future rights under this Agreement of such Carrier shall thereupon terminate.

12) The Shipper will indicate for the information of the Conference, the approximate annual tonnage to be moved under this Agreement: Minimum tonnage (2000 lbs. or 40 cu. ft.) Maximum tonnage (2000 lbs. or 40 cu. ft.)

13) The Carriers which are Members of the Japan-Atlantic and Gulf Freight Conference are as follows:.

Executed this_____day of_____19____

_____

Shipper

Shipper's Address(es):

_____

By_____

Title_____

JAPAN-ATLANTIC AND GULF FREIGHT CONFERENCE

(Revenue Stamp)

_____

Secretary

Port_____

BEFORE THE

FEDERAL MARITIME BOARD

In the Matter of

Statement of

Japan-Atlantic and Gulf Freight Conference
filed under Rule, § 236, Gen. Order 76

Second Further, Amendatory and Supplemental Comments of Isbrandtsen Co., Inc., Relating to the Information Filed, and Protest Against the Conference Being Permitted to Initiate the Proposed Exclusive Patronage Contract/Non-Contract Dual Rate System.

On January 12, 1953, Isbrandtsen Co., Inc. filed herein Comments and Protest, dated that day.

On January 15, 1953, it filed its First further amendatory Comments and Protest.

To those Comments and Protest Isbrandtsen now adds, and filed, the following further, amendatory and supplemental Comments and Protest:

1. It is "unlawful" for the Conference to use this System "before approval" by the Board, which approval has not been given.

2. "Lawful, i.e. approved agreements only, are excepted from the Anti-Trust laws" (Quotes are from the Board's Reported Decision, September 29, 1952 in Docket 724, North Atlantic Continental Freight Conference.)

3. The Board has no authority to approve the system.

The said Statement, filed by this Conference should be disapproved by the Board, and the Conference ordered not to institute, and to cease and desist using, the proposed dual rate system, for the following further reasons;

4. The proposed exclusive patronage contract/non-contract dual rate system contravenes the provisions of the Shipping Act, 1916, and more particularly the provisions of . . .

Section 14 thereof (46 U.S.C. 812) including subdivision "Third" making it a "misdemeanor" for any "common carrier by water" to

"Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminatory or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment or for any other reason." and,

5. This Board should "disapprove" and not "approve" said proposal because it violates the provisions of Section 15 of the Shipping Act, 1916, (U.S.C. 814), in that, in addition to being "unjustly discriminatory" and "unfair as between carriers, shippers, exporters, importers" it "operates" "to the detriment of the commerce of the United States" and is "in violation of this chapter" (46 U.S.C. Chapter 23).

Isbrandtsen calls to the attention of the Board that cabled advices received by it, and dated January 16, 1953, state that this "Conference" (is) "advising" (the) "local trade", (that) "permission to institute" (the) "contract system" (has been) "obtained".

Not only do we claim the Board has no authority to approve the use of this system, but we have no knowledge that this Board has approved the use of this System by this Conference, the basic Conference Agreement (No. 3103) of which contains no language purporting to authorize the establishment of contract/non-contract rates. In the absence of such specific authority, this Board has held that approval is required *before* the system can be used. See the *Report, decided September 29, 1952, of this Board, in Docket No. 724, North Atlantic Continental Freight Conference* (pp. 9, 10) citing *U.S. Nav. Co.* v. *Cunard SS. Co.*

50 F. 2nd 83, 89. See particularly page 10 of said *Report*, where the Board, in referring to the Conference Agreement of the said North Atlantic Continental Freight Conference (which did contain the words, "the Conference may provide specific contract and non-contract rates" * *) stated that "the Conference's basic agreement * alone makes the initiation of the proposed dual rates possible".

Again the "basic (Conference) agreement" of this Japan-Atlantic and Gulf Freight Conference contains no such specific authorization "which alone makes the initiation of the proposed dual rates possible."

Respectfully submitted,

/s/ John J. O'Connor
John J. O'Connor
Attorney for Isbrandtsen Co., Inc.

Dated January 19, 1953
Washington Building
Washington 5, D. C.

BEFORE THE
FEDERAL MARITIME BOARD

IN THE MATTER OF THE
STATEMENT OF JAPAN-ATLANTIC
AND GULF FREIGHT CONFERENCE

Filed under Rule,
Section 236,
General Order 76

Comments of the Department of Justice Relating to the Information Filed, Objecting to the Approval of the Proposed Contract/Non-Contract Dual Rate System.

Now comes the Department of Justice to respectfully petition the Board to disapprove or cancel the contract/non-contract rate system agreement set forth in a Statement filed by the Japan-Atlantic and Gulf & Freight Confer-

ence with the Board on December 24, 1952, and proposed to become effective on January 23, 1953. The Department sets forth the following as grounds for this petition:

1. The reasons offered to support the use of the dual rate system are so inadequate and insubstantial as to require the Board to summarily dismiss the statement as not complying with the provisions of the rule, in that:

a. the information contained in the Statement does not meet the requirements of section 236 of General Order 76 in that inadequate information is furnished as to the necessity for or reasonableness of the use of such rates in the particular trade involved, and as support for the spread or differential between the proposed dual rates.

2. The proposed use of the dual rate system specifically requires the disapproval of the Board, pursuant to the provisions of section 15 of the Shipping Act of 1916, as amended, 46 U.S.C. 812, in that:

a. the proposed rate system would empower a specific group of water carriers to take action as to traffic matters affecting the industry as a whole, would prohibit the independent selection and use of any carrier operating in the trade by shippers utilizing such service, would be unjustly discriminatory or unfair as between carriers, shippers, exporters and importers, and otherwise operate to the detriment of the commerce of the United States, in violation of the provisions of section 15 of the Shipping Act of 1916, as amended, 46 U.S.C. 812, and the antitrust laws of the United States.

3. Immediate suspension of the effective date of the proposed dual rate system should be effected by the Board, in contemplation of its current consideration of and pending decisions in Board Dockets Nos. 724 and 725.

WHEREFORE, the Department of Justice prays that the Board suspend, and/or dismiss, disapprove, or cancel the proposed rate system.

Request for Hearing

The Department of Justice requests this Board to assign the above-entitled cause for hearing.

JAMES E. KILDAY

EDWARD P. HODGES
Acting Assistant Attorney General

WILLIAM J. HICKEY
Special Assistants to
the Attorney General

January 19, 1953.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing comments and objections has this day been served upon all parties of record in this proceeding by mailing a copy thereof to each of said parties.

WILLIAM J. HICKEY

January 19, 1953.
Filing date: January 20, 1953.

The issues, in our opinion, are not the same, are not as confined as the Examiner has stated. It is our opinion, just stated now in this preliminary way, that the Conference, having filed certain information in compliance with General Order 76, giving the reasons for the use of the contract system in that particular trade, and the basis for the spread or differential, that they come before the Board, submit something for approval under Section 15, and that they carry the burden of proof in compliance with General Order 76, and that the issues are not necessarily those confined within the three stated by the Examiner, but that the issues also include, from our standpoint this is very important, the legality of the proposed patronage dual rate contract/non-contract system under the shipping Act of 1916, Section 14.3 and Section 15, and the other laws applicable thereto.

Mr. Hickey: I think that this matter is resolved by the statements last made to the effect that there shouldn't be any primary consideration at this time as to the burden of proof, but merely as to the initiation of the evidence by one or the other party.

Now, that logically, in my opinion, falls on the Conference. They are the one filing this proposed system, and they are the ones that have set forth their reasons why they think that it is necessary in the trade, and the spread is reasonable.

On the other hand, as far as the Administrative Procedure Act is concerned, I think that this is true. I believe that Mr. Turk has correctly stated the rule, but I don't follow his conclusion.

At this time there is no valid approval of this rate system, and I don't think anyone can contest that. Now, the Conference is seeking approval. If they are not seeking approval, I don't know why they are before the Board.

Mr. Turk: We have been brought here. You fellows are the fellows that brought us here.

Mr. Hickey: Then the Board must wish to investigate this matter, and see if it will give its approval to your proposed rate system, which is a proposal, and if it is a proposal, I think you are the proponent or seeker of the Board's approval.

Mr. Hickey: I think it is necessary to clear the record as far as Mr. Aptaker's description of the position of the intervenors, and particularly the Department of Justice is concerned.

We wish to state emphatically that we believe this system requires the prior approval of the Board, and as such they are seeking approval, and it begs the question of law to say that they are not seeking approval. We think this system is, as we suggest, illegal, per se, but if not is a Conference agreement that has to be approved, and is unlawful until approved, and I think the record should show that.

Mr. O'Connor: But look at the title of the proceeding. It is the same title as in 724. The North Atlantic filed a proposed contract system, and the Board then said we will look at it first and will not put it into effect until we look at if, and we have been looking at it since, through the Examiner, and so forth.

Now, this Conference came along and did the same thing. 724 was instituted by the Board because we filed protests, so-called. That wasn't filed exactly under General Order 76, so the exact procedure of filing comments and protests weren't approved, but we filed objections to this North Atlantic being permitted to put its system into effect, and the Board initiated Docket 724, and the Conference went ahead with their proof, whether required or not.

Now, in the hearing on General Order 76—

Examiner Furness: I think we are wasting time.

Mr. O'Connor: Wait until I finish this, if you please. I say this proceeding is the same as 724. Mr. Turk appeared in support of General Order 76, he was the only representative of any conference that supported it, as I recall, and he said in the minutes of that hearing, "The next question is the effect of a protest: I am quite confident that if a Conference comes forward here with a flabby, unsubstantial statement . . ."—which we claim this is—"as to the reason why it is putting its system into effect, and why this spread is put forward, that the Board should say this is no good, we have to examine it further, perhaps we will do what has been done in Docket 724."

So that is just what they have done here, this is an investigation by the Board, and any question of going forward, burden of proof or anything else, follows, and the fundamental theme all through it should be that this basic Conference agreement carries no authority to institute the system.

Order

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 21st of January, A. D. 1953

DOCKET NO. 730

IN THE MATTER OF THE STATEMENT OF JAPAN-ATLANTIC AND GULF FREIGHT CONFERENCE FILED UNDER GENERAL ORDER 76.

It Appearing that, pursuant to section 236.3 of General Order 76 (17 F.R. 10175, November 11, 1952), the Japan-Atlantic and Gulf Freight Conference on December 24, 1952, filed with the Federal Maritime Board a Statement alleging

that the Conference proposed the initiation in the trade between Japan, Korea, and Okinawa and United States Atlantic and Gulf ports of certain contract/non-contract rates to become effective 30 days thereafter, and alleging that said rates are in the best interests of the commerce of the United States and that the spread or differential between the rates is reasonable and lawful; and

It Further Appearing that a Notice of the filing of such Statement by the Conference was published in the Federal Register on December 31, 1952 (17 F.R. 11888) pursuant to section 236.6 of General Order 76; and

It Further Appearing that Isbrandtsen Co., Inc. filed a Protest and Comments with supporting affidavit and Amendatory and Supplemental Comments, alleging, among other things, that the Statement of the Conference does not comply with the requirements of General Order 76, and that the institution of the proposed contract/non-contract rates in said trade would cause Isbrandtsen Co., Inc. irreparable damage, and requesting a hearing on said Protest and Comments, and postponement and suspension of said contract/non-contract rates pending the Board's determination in such hearing; and

It Further Appearing that the Department of Justice also filed certain Comments objecting to the approval of the proposed rates; and

The Board having considered the foregoing Statement, Protest, Comments, and all the papers and documents relating thereto; and

It Appearing therefrom that the Statement of the Conference filed December 24, 1952 complies with the requirements of General Order 76; and

It Not Appearing from any of the above documents or other information now before the Board that the differential between said contract/non-contract rates is arbitrary, unreasonable, or unjustly discriminatory, nor that the ini-

tiation of the proposed contract/non-contract rate system will be unjustly discriminatory or unfair or detrimental to the commerce of the United States, or will be in violation of the Shipping Act, 1916, as amended, or will cause irreparable damages to Isbrandtsen Co., Inc.;

It Is Ordered, that the requests of the Department of Justice and of Isbrandtsen Co., Inc. for a suspension of the proposed contract/non-contract rates of the Japan-Atlantic and Gulf Freight Conference, in the trade between Japan, Korea, and Okinawa and United States Atlantic and Gulf ports, pending hearing and determination, be denied; and

It Is Further Ordered, that the requests of the Department of Justice and of Isbrandtsen Co., Inc. for a hearing on the said Protest and Comments be granted; and

It Is Further Ordered, that such hearing be held before an Examiner of the Federal Maritime Board at a time and place to be fixed.

By direction of the Federal Maritime Board.

A. J. Williams
Secretary

JAGFC

Minutes of Special Meeting

Toyko, 17 November 1952

CONTRACT AND NON-CONTRACT RATE SYSTEM

It was duly moved and seconded:

"That the Secretary-Manager cable the Chairman of the New York Committee of Inward Far East Lines, New York, authority to instruct Mr. Turk to file an application for the contract and non-contract system in accordance with the new rules of procedure of the Federal Maritime Board, and

which are covered in General Memorandum No. 133 of the New York Committee of Inward Far East Lines, dated 10 November."

After further discussion, the following *proposal* was moved and seconded:

RESOLVED that this Conference reinstitute contract/non-contract rates and pursuant to Federal Maritime Board general order 76 file a statement with that Board with respect to such rates and be it further RESOLVED

That the amount of the spread or differential between the contract/non-contract rates shall be nine and one-half percent of the contract rate applicable to the respective commodities or classifications to which contract and non-contract rates shall be applicable and be it further RESOLVED

That the effective date of the contract/non-contract rates shall be the thirtieth day computed according to United States eastern standard time after the date of the filing of the aforesaid statement with the Federal Maritime Board and be it further RESOLVED

That the reasons for the use of said contract/non-contract rates arise out of the following factors:

1. The long history of the Conference,

2. The stability of rates which the Conference and its predecessors have maintained for over a quarter of a century and the effect which previous contract/non-contract systems employed by the Conference and its predecessor have had in maintaining such stability.

3. The maintenance by this Conference and its predecessors for almost twenty-five years of contract/non-contract rates with respect to an ever increasing range of commodities and classifications,

4. The effect of Conference action in eliminating competition among its members relative to freight rates rules and conditions and turning the competition among the members into a contest to give merchants in Conference trade ever

improving service as indicated by progressive increase in the number of Conference members and number of sailing opportunities and constant improvement in type of vessels employed as regards speed, increased bale cubic, reefer capacity and silk rooms,

5. The practice of the non-conference competitor in quoting rates which are ten percent below the Conference rates rounded off to the nearest five cents and

6. Resulting inroads made in the Conference cargo carryings which produce in turn an ever increasing number of non-conference sailings,

7. That the result of all of the foregoing is that the reinstitution of the contract/non-contract system of rates is indispensable to avoid the necessity of adoption by the Conference Members of a policy of meeting cutrate competition with corresponding rate cuts of policy which in the past has always led to rate wars and be it further RESOLVED

That the basis of the aforesaid nine and one-half percent is that such spread is reasonable

1. Because is falls within the zone of reasonableness when tested by the standards established by the Supreme Court of the United States and has been recognized as reasonable by Japanese Government authorities, and

2. Because it is reasonable from the standpoint of the shipper since it enables him to strike a balance. The enjoyment of contract rates on all of his shipments and the employment of cut rate non-conference competition on some shipments and the payment of less than ten percent in excess of the contract rates with respect to his remaining shipments,

3. Because it is reasonable from the standpoint of the carriers in that it is expected to accomplish the objectives of the contract system as prescribed by the Supreme Court of the United States in that it will preserve the stability of freight rates as essential to the prosperity of the commerce in the foreign trade and by restoration to the carriers of some of the cargoes of which they have been deprived because of improper rate cutting increased carrying at reduced contract rates will produce more favorable revenues than lesser carryings at non-contract rates,

4. Because prior to November 15th the Conference tariff rates were substantially equivalent to the proposed non-contract rates and the Isbrandtsen rates were substantially equivalent to the proposed contract rates and large volumes of traffic moved at both said rates thus constituting an irrefutable proof not alone that both said levels of rates fall within the area of reasonableness for rates, but also that the differential between the two reasonable levels of rates fall within the area of reasonableness for the spread or differential between rates,

5. Because the exact differential of nine and one-half percent which is within the area of reasonableness was determined upon under the advice of Conference counsel here whose opinion it is that any spread in excess of said nine and one-half percent might not at this time be favorably regarded by Japanese governmental authorities and

6. Because a considerable number of Japanese shippers and representatives of shippers organizations have indicated that they consider a differential of approximately ten percent as reasonable and as being in accord with discounts of similar amount allowed in Japanese mercantile transactions and have indicated further that they favor the exact differential of nine one-half percent for the reason that the same differential is now in effect in contract/non-contract systems adopted by a number of other conferences involving important segments of Japanese foreign trade and be it further RESOLVED

That a form of freight contract be adopted as drafted by Conference counsel here modified by Conference counsel in New York to the extent deemed necessary in order to comply with the requirements of the Federal Maritime Board and be it further RESOLVED

That James A. Dennean, United States secretary of this Conference be and he is hereby authorized and directed in collaboration with the Japan-Atlantic and Gulf section of the New York Committee of the Inward Far East Lines and with Conference New York counsel to draft a statement in accordance with the requirements of Federal Maritime Board general order 76 based upon the foregoing reso-

lutions but elaborated by reference to the relevant data which has been collected in connection with the subject matter of these resolutions and that Mr. Dennean be designated the official of this Conference authorized to sign and verify said statement on behalf of the Conference and file the same with the Federal Maritime Board."

It was *UNANIMOUSLY* agreed:

"That this matter be passed on to the Chairman of the New York Committee of Inward Far East Lines immediately by the Secretary-Manager for the information of the Committee and legal counsel."

Excerpts from Oral Argument During Argument on Behalf of the Department of Agriculture

Mr. Guill, Board Member: I am a little interested in that. I notice that the foreign buyers designate their shipping lines, and I don't see why a buyer in this country cannot do the same.

I want to read Item 6. "Notwithstanding any other provision of this Agreement, if the shipper submits written proof satisfactory to the secretary of the Japan-Atlantic and Gulf Freight Conference that a foreign buyer on an F.O.B. or F.A.S. shipment from Japan has designated a non-conference vessel for shipment, then such shipment shall be exempted from this Agreement.

"The carrier shall therefore deny contract rates to such foreign buyer to destination specified under paragraph one above unless such foreign buyer shall first submit to a contract with the carrier."

The Chairman of the Board: That in effect says that the foreign buyer, in order to get the contract rates, must be a signatory to the contract. And there is no penalty against the shipper who is a signatory.

Mr. Guill: Well, then, the foreign buyer is regulated to the Conference lines. Is that correct?

The Chairman: If he wants to get the contract rates, the foreign buyer must sign.

Mr. Guill: In other words, a buyer here in the United States must sign this contract with the Conference.

Mr. Turk: No.

Mr. Cockrum: That's my construction of it likewise, Mr. Guill.

Mr. Turk: No.

Mr. Cockrum: If Mr. Turk has some other construction of it I'd be glad to hear from him.

Mr. Guill: We'll get that. But I wanted to hear your idea.

Mr. Cockrum: That is precisely my idea, that he is bound.

Excerpts from Oral Argument on Behalf of Federal Maritime Board

The Chairman: This contract is signed both by—either by shipper or by importer, is that correct?

Mr. Aptaker: Yes, sir. And finally we felt that the provision requiring all Japanese exporters to ship via conference lines, whether the shipment if C.I.F. or F.O.B., would require some clarification. The way it is constituted it conflicts with provision six of the contract, which Mr. Turk has pointed out and will undoubtedly make plain again—under Section 6, American importers are privileged to designate a non-conference line for the first shipment, but after that they must sign a contract to get the contract rates.

The Chairman: It says that the signatory to the contract gets one free bite if he acts in good faith. Thereafter, if he violates his agreement, he is subject to appeal.

Mr. Aptaker: Well, it means then, that a Japanese exporter is bound to pay the non-contract rate, even for his

own shipment, after he has once shipped on F.O.B. shipment by a non-conference line, where he had the choice of the carrier himself.

Mr. Guill: This is going to seem to be a point of the argument here, on this Section 6. Do you come to the conclusion that the buyer has to sign a contract then?

Mr. Aptaker: That's what it seems to require.

Mr. Guill: And in the event the buyer were to sign this contract here in this country, and in the case of arbitration, as you pointed out, he would have to travel over to Tokyo to work it out.

Mr. Aptaker: That's right. We felt there should be a provision for arbitration in the United States.

Mr. Guill: Do you think this is a fair contract?

Mr. Aptaker: Well, if the content of it is that shippers or exporters in Japan could say to every shipper that they are required to ship by a conference line because they are a conference signatory, and a shipper under F.O.B. has requested that they use a non-conference line, then the dual rate system could be easily gotten around.

This contract provides that F.O.B. consignees in the United States are also to be tendered these rates, and if they refuse to sign a contract—when they have a later F.O.B. shipment they have to pay the non-contract rate. If they sign it, they can control later shipments under F.O.B. terms and will be given the lower, contract rate.

The Chairman: Do you think that the end result of this contract would be that the American buyer would have to ship in a conference line?

Mr. Aptaker: Yes, he would probably have to sign a contract to get the lower, contract rate.

The Chairman: In other words, then, he wouldn't have the right to ship in an American flag, independent line?

Mr. Aptaker: That's correct, and not get the contract rate.

The Chairman: If it was C.I.F. would he get the rate, the contract rate?

Mr. Aptaker: If he got C.I.F. it would be—

The Chairman: Assuming the exporter is signatory.

Mr. Aptaker: Then it would go on the contract rate, yes, sir.

The Chairman: So he doesn't have to become a signatory in order to get the contract rate?

Mr. Aptaker: No, but if he wants to control the shipment by shipping F.O.B. he does.

The Chairman: The same thing applies to the exporter?

Mr. Aptaker: That is correct.

The Chairman: If he wants to get the contract rate he has to be signatory?

Mr. Aptaker: That's absolutely correct.

Mr. Guill: But in the event the shipper didn't comply with this—

Mr. Aptaker: He's got to absorb the difference in cost if it goes to an independent line. If he has already once controlled the shipment and has declined thereafter to sign a conference contract, when he controls the next shipment and puts it on a non-conference line, if he tries to ship that, he's going to pay the non-contract rate.

Mr. Guill: Then that does control the buyer, to which line he uses, on which line he ships.

Mr. Aptaker: To that extent, yes.

The Chairman: Again depends on the type of purchase contract, C.I.F. or F.O.B. On C.I.F. he gets the contract rate if the shipper is a contract signatory.

Mr. Guill: Now, that first point, about the buyer. If the buyer is going to have some say as to—

Mr. Turk: I am going to come to that right now, and I'd like to devote some time to that.

Mr. Klieger just called my attention to the fact that in the prewar years, when we had a contract system here, the Japanese lines didn't get all the business, and I don't think they ever will.

I'd like to have you consider with me the position of an American F.O.B. buyer. Now, you have got to consider his situation with respect to two legal rights: First, his right to ship non-conference. Second, his right to ship conference.

Now, if he's an F.O.B. buyer, then by hypothesis the goods become his as soon as they get on the ship; title passes then. And he has the right to say where they are going to go.

Now, if he's not a contract shipper and not a contract signatory, then he can ship as many shipments by Isbrandtsen or any other non-conference line as he pleases. And it's not a question of doing it once and it isn't a question of doing it twice or fifty times. He can do it without limitation.

Mr. Guill: But his buyers' market, from whom he buys, is going to be limited, isn't it?

Mr. Turk: No, I don't think so. Why should it, F.O.B.? He can say "I want to buy F.O.B." I don't know of anybody who is going to refuse to sell to him because he wants to buy F.O.B.

Mr. Guill: I understand from this contract that the seller over there can only let him have it once.

Mr. Turk: If you can show me where it says anything about once—this Clause 6 is something that I personally

drafted, and you will find that it is entirely different from the conference—in the Trans-Pacific Freight Conference of Japan. You will see that it starts out with this: "Notwithstanding any other provision of this agreement . . ." So that anything in the other paragraph is wiped out. It says, "If the shipper submits written proof that he is a foreign buyer on an F.O.B. or F.A.S. shipment to Japan, he can designate a non-conference ship."

Anytime that he comes along and says, "I'm an F.O.B. buyer from America, and here's my bill of lading. You will see that it is made out in the name of the American buyer." That means that the Japanese shipper cannot be held for breach of his freight contract with us, if it's a million times or two million times. He can ship any number of shipments by Isbrandtsen without prejudicing the seller whatsoever.

Then we say, "* * * we shall deny thereafter to the shipper the contract rates unless he signs the contract." Well, of course, he's the shipper, and if he's not a contract shipper he doesn't get the contract rates. That's on F.O.B.

But when he does, if he does, he's got an advantage over other shippers for this reason: When — as Mr. Morse pointed out this morning—when he wants to ship conference he can say to his seller, "Sell me C.I.F. I am a contract shipper, I get the benefit of the contract rates. When Isbrandtsen's in port, make out the bill of lading in my name, I want to ship on Isbrandtsen."

And he can ship it on Isbrandtsen any number of times.

Mr. Guill: I lost you there. Say I am the seller, you are the buyer.

Mr. Turk: Yes.

Mr. Guill: You tell me you want an F.O.B. shipment.

Mr. Turk: That's right.

Mr. Guill: And I have a contract with the conference.

Mr. Turk: That's right.

Mr. Guill: And I go to the conference and I say, "Look, this man wants this F.O.B. shipment. I want to send it to him this time."

Mr. Turk: On Isbrandtsen?

Mr. Guill: No, under my contract.

Mr. Turk: No, no, no. If he's an F.O.B. buyer and he's not a contract shipper, he can't get a conference vessel at contract rates.

Mr. Guill: This says that you can go to Isbrandtsen one time.

Mr. Turk: That's right.

Mr. Guill: Just one time?

Mr. Turk: No, no, any number of times.

Mr. Guill: But I can't take advantage of the contract rate any more.

Mr. Turk: You never could, since you're not a contract shipper and you are an F.O.B. buyer, which means that you are the shipper. You couldn't ship even once on a conference vessel and get a contract rate. But you can ship on Isbrandtsen's vessels any number of times, eternally, without prejudicing your sellers' contract rate.

Mr. Guill: This sellor could never ship under Isbrandtsen if he were under contract with you?

Mr. Turk: No, not if it was under a C.I.F. transaction, where he is also the shipper. He can't ship under Isbrandtsen.

Mr. Guill: Well, if the C.I.F.—in the C.I.F. the seller controls the bottom?

Mr. Turk: That's right.

Mr. Guill: And on F.O.B. the buyer controls the bottom?

Mr. Turk: That's right.

Mr. Guill: But you're limiting ten percent of this trade to the F.O.B. people. They can get ten percent.

Mr. Turk: No, no, Mr. Guill. The Japanese shippers we had over here—Mr. Tankazani, who is the chairman of the Freight Commission, Japanese Shippers' Federation, and he represents 27 shippers' organizations and two thousand separate shippers, and he testified that there will be plenty of Japanese shippers who can ship on Isbrandtsen twice a month—or, say on Isbrandtsen twice a month and once on the conference lines at non-contract rates and still come out better than the contract signers.

There is a vast field, both in the United States and in Japan for a non-conference line. And Mr. Krinkley admitted that he'd get about ten percent of the business, which is more than anybody else would get.

Excerpts from Transcript During Rebuttal Argument on Behalf of Isbrandtsen Co., Inc.

The Chairman: Well, I assume, Mr. O'Connor, you have picked up some cargo at points before you arrive at Japan.

Mr. O'Connor: Well, very little from the United States. We carry some to Japan. We carry cargo to Japan. Of course, the Japanese lines are going to get all the business.

Now, as to the F.O.B. The Japanese witnesses testified that most of the business was F.O.B. in Japan. Currency, of course, enters into that. The Japanese have testified they'd like C.I.F. And they testified very courageously they liked it because they could do a little chiseling on the rate. Maybe they didn't use that word; that's an old American right. They said they could make a little more money.

But the F.O.B. What does it come down to in this labored explanation by Mr. Turk? Somebody, I think it was the

Chairman, said that the shipper "only had one bite." Now it's the buyer that has "one bite." The FOB buyer, who traditionally, by custom, it is his right to designate the carrier. He can only do it once. Mr. Turk labored the shipper, of course, would be permitted to ship once, but that if the same buyer orders a second time from the same shipper, he's got to sign a contract to get the contract rate.

The Chairman: The same thing applies in reverse to a shipper, doesn't it? The shipper can't get the contract rates unless he signs a contract.

Mr. O'Connor: Well—

The Chairman: Isn't that true?

Mr. O'Connor: Sure.

The Chairman: Why should the buyer be in any better position?. Why should he be permitted to get the contract rates unless he signed the contract?

Mr. O'Connor: I'm saying that this is the first time, this is the first time in any conference agreement that there has been any attempt to tie up the F.O.B. buyer.

The Chairman: This doesn't tie him up. It merely says that the shipper's contract signing may not extend to the buyer the benefit of the contract rates unless the buyer also signs a conference contract if he buys F.O.B.

Mr. O'Connor: It says that you cannot patronize an independent unless you pay the conference rate.

The Chairman; No, no:

Mr. O'Connor: Well, that's what it says.

The Chairman: That is your contention.

Mr. O'Connor: That was the public counsel's contention. That's why he opposed it.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,027 January Term, 1956

Isbrandtsen Company, Inc., Petitioner,

v.

United States of America, and Federal Maritime Board, Respondents

Japan-Atlantic and Gulf Freight Conference, et al., Intervenors

The Secretary of Agriculture, Intervenor

Before Danaher, Circuit Judge, in Chambers

Order

Counsel for all parties having appeared before me for prehearing conference pursuant to Rule 38(k), and a prehearing stipulation having been prepared and presented to counsel for comment and said prehearing stipulation, as amended, now being before me for approval, it is

ORDERED that the said prehearing stipulation be approved and that the Clerk be directed to file it forthwith; that the issues in his case be limited to those presented in said prehearing stipulation; that such differences as may be noted in said stipulation as to the exact statement of the issues as submitted by the respective parties shall be deemed to encompass the area of agreement as well as disagreement as to any such issue wherein such differences shall be apparent or asserted, but no party shall be precluded from argument or reply, as the case may be, in respect to any such the Rules of this Court, such stipulation be modified by a version of an issue as stated; and that, unless pursuant to subsequent order of this Court to prevent manifest injustice, said stipulation shall control the subsequent course of the proceedings in this case.

It is FURTHER ORDERED that this order and the prehearing stipulation be printed in the joint appendix to the brief.

Dated: February 20, 1956

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed Feb. 20, 1956. Joseph W. Stewart, Clerk

No. 13,027 January Term, 1956

Isbrandtsen Company, Inc., Petitioner,

v.

United States of America and Federal Maritime Board, Respondents,

Japan-Atlantic and Gulf Freight Conference, et al., Intervenors,

The Secretary of Agriculture, Intervenor.

Prehearing Stipulation

Counsel for all the parties to this case having appeared before Circuit Judge Danaher for a Prehearing Conference pursuant to Rule 38(k), and it appearing that there is a serious controversy among the parties as to the exact scope of some of the issues to be presented, and counsel for petitioner, counsel for respondent Federal Maritime Board and counsel for intervenor Japan-Atlantic and Gulf Freight Conference having each submitted statements of the issues, and counsel for respondent the United States having orally stated that he will participate on the side of the petitioner and accept its statement of the issues, and counsel for intervenor The Secretary of Agriculture having orally stated that he will participate only to the extent of presenting argument on the side of petitioner on petitioner's Issue

No. 1, it is hereby stipulated that the claims and contentions of the parties with regard to the issues are as follows, viz:

(1) Petitioner claims the first issue presented is, as follows:

Whether the employment of the so-called exclusive patronage contract/non-contract dual rate system under which common-carrier members of a steamship conference acting in concert, charge one set of rates to shippers who agree to ship all their cargo exclusively on the vessels of the conference lines, and charge a higher set of rates for identical transportation services to shippers who do not enter into such exclusive patronage contracts is unlawful under, or in violation of sections 14, 15, 16, and/or 17 of the Shipping Act, 1916, so that the Federal Maritime Board under section 15 of said Act, lacks authority to approve an agreement, understanding or arrangement entered into by the members of such a conference for the use of such a system?

and counsel for the other parties agree as to petitioner's statement of issue No. 1.

(2) Petitioner contends that a further issue exists, i.e.:

Whether such a system violates the various provisions of the Anti-Trust laws or any other pertinent statutes, including the question whether the system could ever be legally approved under section 15 of the Shipping Act, because that section can exempt from the Anti-Trust laws only agreements between carriers and "other persons" subject to the Act, whereas the fundamental part of this system is a so-called exclusive patronage contract between conference lines and shippers, who are neither carriers nor "other persons" subject to the Act.

and respondent Federal Maritime Board and intervenor Conference, although not agreeing that the foregoing is an issue in this case, concede that they may argue the matter set forth above, but contend that the issue raised in petitioner's Paragraph 2 should read, as follows:

Whether such a system violates the various provisions of the Anti-Trust laws or any other pertinent statutes, in-

cluding the question whether the system could ever be legally approved under section 15 of the Shipping Act?

(3) Petitioner claims that a third issue should be stated as follows:

Whether the Board could, in any event, approve the use of the exclusive-patronage-contract-dual-rate system in the particular trade herein involved on the basis of the facts existing in the administrative record as found by the Board itself and the Board's examiner?

and the respondent and intervenor Conference claim that petitioner's Issue No. 3 should read, as follows:

Whether the Board could, in any event, approve the use of exclusive-patronage-contract-dual-rate system in the particular trade herein involved on the basis of the facts existing in the administrative record as found by the Board?

(4) Petitioner claims a fourth issue should read as follows:

Whether the Board, in approving such a system under section 15 of the Shipping Act even assuming the legality of such a system, must have before it a clearly stated "agreement" or "understanding" between the common carriers involved, including the actual rates which would be charged by such conference carriers pursuant to their concerted action?

and respondent and intervenor Conference object thereto on the ground that no specific agreement has been challenged in petitioner's statement of the issue, and claim that Issue No. 4 should read, as follows:

Whether the Board erred in determining that the statement filed by Japan-Atlantic and Gulf Freight Conference under the Board's General Order 76, constituted a memorandum of an agreement, or of a modification of an agreement, which might be approved under the provisions of section 15 of the Shipping Act, 1916?

(5) Petitioner states issue No. 5 to be as follows:

If section 15 of the Shipping Act, 1916, should authorize the Board to approve such a system, whether such section of the Act would thereby be rendered unconstitutional under the "Due Process" clause or other provisions of the Constitution by reason of the fact that it would give the Board and/or Conference the power to force the independent carrier or carriers either out of the trade or into the conference and/or permanently prevent independent competition from entering the trade by making non-conference competition economically impossible?

and respondent and intervenor Conference contend issue No. 5 should be, as follows:

If section 15 of the Shipping Act, 1916, should authorize the Board to approve such a system, whether such section of the Act should thereby be rendered unconstitutional under the "Due Process" clause or other provisions of the Constitution?

It is further stipulated that petitioner and respondent the United States of America and intervenor the Secretary of Agriculture shall designate the portions of the record which they wish printed in the Joint Appendix by February 23, 1956, and respondent Federal Maritime Board and intervenor Conference shall designate the portions of the record which they wish printed by March 5, 1956, after which the Joint Appendix shall be printed as promptly as possible. Petitioner shall file its brief by March 22, 1956. If the Joint Appendix is not prepared by that date, petitioner may file a single typewritten copy of his brief without page references to the Joint Appendix, to be followed by a printed brief with page references to the Joint Appendix as soon as possible. The briefs of respondent, United States of America, and of intervenor, Secretary of Agriculture, shall be filed in the time provided for filing petitioner's briefs. Respondent's brief and brief of intervenor, Japan-Atlantic and Gulf Freight Conference, shall be filed by April 17, 1956. If the Joint Appendix has not been prepared by that date typewritten briefs may be filed without page refer-

ences to the Joint Appendix, to be followed by printed briefs with page references to the Joint Appendix as soon as possible. Petitioner's reply brief shall be filed in printed form by May 2, 1956, and all other briefs in printed form shall be filed by that date and the case set for hearing thereafter as soon as the business of this Court will permit.

Approved: (s)Danaher,
Circuit Judge

Dated: February 20, 1956

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

January Term, 1956

No. 13,027

ISBRANDTSEN COMPANY, INC., *Petitioner,*

v.

UNITED STATES OF AMERICA, AND FEDERAL MARITIME BOARD, *Respondents,*
JAPAN-ATLANTIC AND GULF FREIGHT CONFERENCE,
SECRETARY OF AGRICULTURE, *Intervenors.*

Before: Danaher, Circuit Judge, in Chambers.

Order

Upon consideration of the letters of counsel regarding the preparation of the appendix in the above case, it is

ORDERED that the prehearing stipulation entered herein February 20, 1956, be, and it is hereby, amended by striking from the petitioner's issue No. 3, the words "and the Board's examiner."

It is FURTHER ORDERED that the time for filing briefs and the joint appendix be, and it is hefeby, extended as follows:

Petitioner shall file a single typewritten copy of its brief by March 29, 1956, without page references to

the joint appendix, to be followed by a printed brief with page references to the joint appendix as soon as possible.

The briefs of respondent, United States of America, and of intervenor, Secretary of Agriculture, shall be filed at the same time and in the same manner as petitioner's briefs.

The brief of respondent, Federal Maritime Board, and the brief of intervenor, Japan-Atlantic and Gulf Freight Conference, shall be filed by April 24, 1956.

If the joint appendix is not filed by that date, each of said parties may file a single typewritten brief without page references to the joint appendix, to be followed by printed briefs as soon as possible. Petitioner's reply brief shall be filed in printed form by May 9, 1956, and the case set for hearing thereafter as soon as the business of this Court will permit.

Dated: March 16, 1956